

No. 17-7306

IN THE

**United States Court of Appeals
for the Fourth Circuit**

UNITED STATES OF AMERICA,
Appellee,

v.

BLAKE CHARBONEAU,
Appellant.

On Appeal from the United States District Court for
the Eastern District of North Carolina (Dever, C.J.)

JOINT APPENDIX

VOL. I

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APPEAL,CLOSED,Exhibits,USMJ Gates

U.S. District Court
EASTERN DISTRICT OF NORTH CAROLINA (Western Division)
CIVIL DOCKET FOR CASE #: 5:15-hc-02287-D

United States of America v. Charboneau
Assigned to: Chief Judge James C. Dever, III
Case in other court: 17-07306
Cause: 18:4248 Civil Commitment of a Sexually
Dangerous Person

Date Filed: 12/03/2015
Date Terminated: 09/28/2017
Jury Demand: None
Nature of Suit: 540 Mandamus &
Other
Jurisdiction: U.S. Government
Defendant

Petitioner

United States of America

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V.

Respondent

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TERMINATED: 09/08/2016

Date Filed	#	Docket Text
12/03/2015	<u>1</u>	Certificate of a Sexually Dangerous Person against Blake Charboneau, filed by United States of America. (Attachments: # <u>1</u> Certification of a Sexually Dangerous Person by Dr. Ivonne E.

		Bazerman, dated August 20, 2015, # 2 Text of Proposed Order) (Acker, G.) (Entered: 12/03/2015)
12/03/2015	2	Notice of Appearance filed by G. Norman Acker, III on behalf of United States of America. (Acker, G.) (Entered: 12/03/2015)
12/03/2015	3	Notice of Appearance filed by Christopher M. Anderson on behalf of United States of America. (Anderson, Christopher) (Entered: 12/03/2015)
12/04/2015	4	Notice of Appearance filed by Michael James on behalf of United States of America. (James, Michael) (Entered: 12/04/2015)
12/04/2015		Case Submitted to Magistrate Judge James E. Gates: for initial review. (McLemore, J) (Entered: 12/04/2015)
12/04/2015	5	ORDER - This case is a proceeding by the government under 18 U.S.C. § 4248 for the civil commitment of respondent as a sexually dangerous person. The courts Standing Order on such cases, No. 13-SO-2 (E.D.N.C. 21 Oct. 2013) ("Standing Order"), shall govern proceedings in this case. Signed by Magistrate Judge James E. Gates on 12/4/2015. Counsel is reminded to read the entire order for critical dated and deadlines. (Indig, A.) (Entered: 12/04/2015)
12/08/2015	6	ORDER - The court hereby APPOINTS Christopher North, Ph.D., a licensed psychologist, as a mental health examiner pursuant to 18 U.S.C. §§ 4247(b) and 4248(b) and 5(b) of Standing Order 13-SO-2. Signed by Magistrate Judge James E. Gates on 12/8/2015. Copy sent to Dr. North via US Mail. (Indig, A.) (Entered: 12/08/2015)
12/08/2015	7	Notice of Appearance filed by Robert E Waters on behalf of Blake Charboneau. (Waters, Robert) (Entered: 12/08/2015)
12/29/2015	8	MOTION to Appoint Expert <i>Dr. Joseph Julian Plaud</i> filed by Blake Charboneau. (Attachments: # 1 Curriculum Vitae of Dr. Plaud, # 2 Text of Proposed Order) (Waters, Robert) (Entered: 12/29/2015)
01/04/2016		Motion Referred to US Magistrate Judge James E. Gates regarding: 8 MOTION to Appoint Expert <i>Dr. Joseph Julian Plaud</i> . (Indig, A.) (Entered: 01/04/2016)
01/04/2016	9	ORDER - GRANTING 8 Motion to Appoint Expert. The court hereby GRANTS respondent's motion and APPOINTS Dr. Plaud, a licensed psychologist, as an additional mental health examiner selected by respondent. Signed by Magistrate Judge James E. Gates on 1/4/2016. Counsel is reminded to read the entire order for critical

		dates and deadlines. Copy of order sent to Dr. Plaud via US Mail. (Indig, A.) (Entered: 01/04/2016)
01/11/2016	10	SEALED (<i>Selected Participants Only</i>)Forensic Report received as to Blake Charboneau (available to: Respondent Blake Charboneau, Petitioner United States of America). (Attachments: # 1 Forensic Evaluation by Dr. Heather H. Ross, dated July 24, 2015) (Acker, G.) Modified on 1/11/2016 to remove the word Proposed. (McLemore, J). (Entered: 01/11/2016)
01/14/2016	11	MOTION for Extension of Time to File <i>Petitioner's Expert Report</i> , MOTION for an Examination Under Standing Order 13-SO-2 (Oct. 21, 2013) filed by United States of America. (Attachments: # 1 Text of Proposed Order) (James, Michael) (Entered: 01/14/2016)
01/14/2016	12	Memorandum in Support regarding 11 MOTION for Extension of Time to File <i>Petitioner's Expert Report</i> MOTION for an Examination Under Standing Order 13-SO-2 (Oct. 21, 2013) filed by United States of America. (Attachments: # 1 Exhibit 1-Curriculum Vitae of Dr. Gary Zinik) (James, Michael) (Entered: 01/14/2016)
01/14/2016	13	Memorandum in Support regarding 11 MOTION for Extension of Time to File <i>Petitioner's Expert Report</i> MOTION for an Examination Under Standing Order 13-SO-2 (Oct. 21, 2013) (<i>CORRECTED Case Caption</i>) filed by United States of America. (Attachments: # 1 Exhibit 1-Curriculum Vitae of Dr. Gary Zinik) (James, Michael) (Entered: 01/14/2016)
01/14/2016		Motion Referred to US Magistrate Judge James E. Gates regarding: 11 MOTION for Extension of Time to File <i>Petitioner's Expert Report</i> , MOTION for an Examination Under Standing Order 13-SO-2 (Oct. 21, 2013) . (McLemore, J) (Entered: 01/14/2016)
01/15/2016		Motions No Longer Referred: 11 MOTION for Extension of Time to File <i>Petitioner's Expert Report</i> MOTION for an Examination Under Standing Order 13-SO-2 (Oct. 21, 2013) (McLemore, J) (Entered: 01/15/2016)
02/01/2016	14	SEALED (<i>Selected Participants Only</i>)Forensic Report received as to Blake Charboneau (available to: Respondent Blake Charboneau, Petitioner United States of America). (Attachments: # 1 Forensic Report of Court Appointed Examiner Dr. Christopher North, # 2 Confidentiality Agreement of Court Appointed Examiner Dr. Christopher North, # 3 Curriculum Vitae of Court Appointed Examiner Dr. Christopher North, # 4 Case list of Court Appointed

		Examiner Dr. Christopher North) (Acker, G.) Modified on 2/1/2016 to remove the word PROPOSED. (Blankenship, T.) (Entered: 02/01/2016)
02/10/2016		Motion Referred to US Magistrate Judge James E. Gates regarding: 11 MOTION for Extension of Time to File <i>Petitioner's Expert Report</i> MOTION for an Examination Under Standing Order 13-SO-2 (Oct. 21, 2013). (Indig, A.) (Entered: 02/10/2016)
02/10/2016	15	Notice filed by United States of America (<i>Joint Notice of Proposed Hearing Dates</i>). (James, Michael) (Entered: 02/10/2016)
02/10/2016		Case Submitted to Chief Judge James C. Dever III regarding 15 Notice filed by United States of America - Joint Notice of Proposed Hearing Dates. (Indig, A.) (Entered: 02/10/2016)
02/11/2016	16	ORDER - GRANTING 11 Motion. Dr. Zinik may conduct an examination of respondent by 18 February 2016; Respondent shall fully cooperate in the examination and the government shall file Dr. Zinik's report on his evaluation of respondent as soon as practicable after the examination is conducted, but in no event later than 4 March 2016. Signed by Magistrate Judge James E. Gates on 2/10/2016. (Indig, A.) (Entered: 02/11/2016)
02/16/2016	17	SEALED (<i>Selected Participants Only</i>)Forensic Report received as to Blake Charboneau by Dr. Joseph Plaud (available to: Respondent Blake Charboneau, Petitioner United States of America). (Waters, Robert) Modified on 2/16/2016 to remove the word PROPOSED. (Blankenship, T.) (Entered: 02/16/2016)
02/16/2016	18	Notice filed by Blake Charboneau <i>Curriculum Vitae of Dr. Joseph Plaud</i> . (Waters, Robert) (Entered: 02/16/2016)
02/17/2016	19	Notice filed by Blake Charboneau <i>Confidentiality Agreement of Dr. Joseph Plaud</i> . (Waters, Robert) (Entered: 02/17/2016)
03/03/2016	20	SEALED (<i>Selected Participants Only</i>)Forensic Report received as to Blake Charboneau (available to: Respondent Blake Charboneau, Petitioner United States of America). (Attachments: # 1 Forensic Report by Dr. Gary Zinik, # 2 Confidentiality Agreement by Dr. Gary Zinik, # 3 Curriculum Vitae of Dr. Gary Zinik, # 4 Expert Witness Testimony List of Dr. Gary Zinik) (James, Michael) Modified on 3/3/2016 to remove the word "proposed". (Indig, A.) (Entered: 03/03/2016)
03/16/2016	21	

		MOTION for Extension of Time to Complete Discovery filed by Blake Charboneau. (Attachments: # 1 Text of Proposed Order) (Waters, Robert) (Entered: 03/16/2016)
03/18/2016		Motion Referred to US Magistrate Judge James E. Gates regarding: 21 MOTION for Extension of Time to Complete Discovery . (McLemore, J) (Entered: 03/18/2016)
03/18/2016	22	ORDER granting 21 Motion for Extension of Time to Complete Discovery. The deadline for completion of discovery is extended to 20 May 2016. The parties shall submit final prehearing disclosures by 27 May 2016, objections to such disclosures by 3 June 2016, and a joint proposed prehearing order by 13 June 2016. All dispositive motions shall be filed by 13 June 2016. Signed by Magistrate Judge Robert B. Jones, Jr. on 3/18/2016. Counsel is reminded to read the entire order for critical dates and deadlines. (McLemore, J) (Entered: 03/18/2016)
03/23/2016	23	Notice filed by United States of America (<i>Joint Notice of Proposed Hearing Dates</i>). (James, Michael) (Entered: 03/23/2016)
04/06/2016	24	Order Setting Hearing -Trial set for 8/23/2016 at 9:00 AM in Raleigh - 7th Floor - Courtroom 1 before Chief Judge James C. Dever III. Signed by Chief Judge James C. Dever III on 4/6/2016. (Agiovlassitis, J.) (Entered: 04/06/2016)
05/17/2016	25	Notice of Writ to Produce Blake Charboneau on 8/23/2016 in Raleigh. (James, Michael) (Entered: 05/17/2016)
06/13/2016	26	Proposed Pretrial Order (<i>Joint</i>) by United States of America. (James, Michael) (Entered: 06/13/2016)
08/09/2016	27	Proposed Pretrial Order (<i>Joint and Amended</i>) by United States of America. (James, Michael) (Entered: 08/09/2016)
08/16/2016	28	Joint MOTION to Stay <i>the Civil Commitment Proceedings</i> filed by United States of America. (Attachments: # 1 Text of Proposed Order) (James, Michael) (Entered: 08/16/2016)
08/16/2016	29	Memorandum in Support regarding 28 Joint MOTION to Stay <i>the Civil Commitment Proceedings</i> filed by United States of America. (James, Michael) (Entered: 08/16/2016)
08/16/2016	30	ORDER - GRANTING 28 Motion to Stay. It is hereby ORDERED that the civil commitment proceedings in this case is stayed until further order by the Court. Signed by Chief Judge James C. Dever III on 8/16/2016. (Indig, A.) (Entered: 08/16/2016)

09/07/2016	31	Notice of Substitution of Counsel filed by Katherine E. Shea on behalf of Blake Charboneau substituting for Robert E. Waters. (Shea, Katherine) (Entered: 09/07/2016)
09/07/2016	32	MOTION TO LIFT STAY OF HEARING , MOTION to Continue <i>TO RESET HEARING FOR JANUARY 2017</i> filed by Blake Charboneau. (Shea, Katherine) (Entered: 09/07/2016)
09/08/2016		Motion Submitted to United States Chief Judge James C. Dever, III regarding 32 MOTION TO LIFT STAY OF HEARING and MOTION to Continue <i>TO RESET HEARING FOR JANUARY 2017</i> . (Blankenship, T.) (Entered: 09/08/2016)
09/14/2016	33	Order Setting Hearing - 4248 Bench Trial set for 1/18/2017 at 9:00 AM in Raleigh - 7th Floor - Courtroom 1 before Chief Judge James C. Dever III. Signed by Chief Judge James C. Dever III on 9/13/2016. (Indig, A.) (Entered: 09/14/2016)
10/25/2016	34	Order Re-Setting Hearing - 4248 Bench Trial set for 1/27/2017 at 9:00 AM in Raleigh - 7th Floor - Courtroom 1 before Chief Judge James C. Dever III. Signed by Chief Judge James C. Dever III on 10/25/2016. (Indig, A.) (Entered: 10/25/2016)
11/22/2016	35	Notice of Writ to Produce Blake Charboneau on 1/27/2017 in Raleigh. (James, Michael) (Entered: 11/22/2016)
01/13/2017	36	Proposed Pretrial Order by United States of America. (James, Michael) (Entered: 01/13/2017)
01/15/2017	37	Notice of Appearance filed by Halerie F. Mahan on behalf of Blake Charboneau. (Mahan, Halerie) (Entered: 01/15/2017)
01/16/2017	38	MOTION for Extension of Time to File <i>Proposed Findings of Fact and Conclusions of Law</i> filed by Blake Charboneau. (Attachments: # 1 Text of Proposed Order) (Shea, Katherine) (Entered: 01/16/2017)
01/16/2017	39	Proposed Order regarding 38 MOTION for Extension of Time to File <i>Proposed Findings of Fact and Conclusions of Law</i> <i>CORRECTED PROPOSED ORDER</i> filed by Blake Charboneau. (Shea, Katherine) (Entered: 01/16/2017)
01/16/2017	40	MOTION to Communicate Ex Parte with Respondent-Selected Examiner, Dr. Joseph Julian Plaud filed by Blake Charboneau. (Attachments: # 1 Text of Proposed Order) (Shea, Katherine) (Entered: 01/16/2017)
01/17/2017		

		Motion Submitted to United States Chief Judge James C. Dever, III regarding 38 MOTION for Extension of Time to File <i>Proposed Findings of Fact and Conclusions of Law</i> . (Blankenship, T.) (Entered: 01/17/2017)
01/17/2017	41	ORDER - GRANTING 38 Motion for Extension of Time to File. Each party shall file their proposed findings of fact and conclusions of law no later than 2/3/2017. Signed by Chief Judge James C. Dever III on 1/17/2017. (Indig, A.) (Entered: 01/17/2017)
01/17/2017	42	ORDER - DENYING 40 Motion to communicate ex parte with Dr. Plaud. Signed by Chief Judge James C. Dever III on 1/17/2017. (Indig, A.) (Entered: 01/17/2017)
01/23/2017	43	JOINT PRETRIAL ORDER. Signed by Chief Judge James C. Dever III on 1/23/2017. (Indig, A.) (Entered: 01/23/2017)
01/27/2017	44	Minute Entry for proceedings held before Chief Judge James C. Dever III in Raleigh: Bench Trial completed on 1/27/2017. Counsel for government and respondent present. Opening statements by both parties. All exhibits in the pre-trial order are admitted. All doctors presented are tendered as experts. Government called four witnesses. Respondent called two witnesses. Closing arguments by both parties. Court takes the matter under advisement and will announce its decision on a later date. (Court Reporter Amy Condon) (Briggeman, N.) (Entered: 01/27/2017)
01/27/2017	45	Exhibit List for bench trial held on January 27, 2017. (Briggeman, N.) (Entered: 01/27/2017)
02/03/2017	46	Proposed Findings of Fact by Blake Charboneau. (Shea, Katherine) (Entered: 02/03/2017)
02/03/2017	47	Proposed Findings of Fact by United States of America. (James, Michael) (Entered: 02/03/2017)
02/06/2017	48	Proposed Findings of Fact by United States of America. (James, Michael) (Entered: 02/06/2017)
09/21/2017	49	Order Setting Hearing - Hearing Announcing Decision set for 9/28/2017 at 4:00 PM in Raleigh - 7th Floor - Courtroom 1 before Chief Judge James C. Dever III. Signed by Chief Judge James C. Dever, III on 9/21/2017. (Indig, A.) (Entered: 09/21/2017)
09/21/2017	50	Notice of Writ to Produce Blake Charboneau on 9/28/2017 in Raleigh. (Anderson, Christopher) (Entered: 09/21/2017)
09/28/2017	51	

		Minute Entry for proceedings held before Chief Judge James C. Dever, III in Raleigh: Hearing to Announce Decision held on 9/28/2017. Respondent present with counsel. Attorney for government present. Court announces findings of fact and conclusions of law in open court. Written order to follow. (Court Reporter Lori Russell) (Indig, A.) (Entered: 09/28/2017)
09/28/2017	52	ORDER - The United States has proven that Charboneau is a sexually dangerous person as defined in the Adam Walsh Act. Accordingly, judgment shall be entered in favor of petitioner, the United States, and against respondent, Blake Charboneau. Charboneau is hereby committed to the custody and care of the Attorney General pursuant to 18 U.S.C. § 4248. Signed by Chief Judge James C. Dever III on 9/28/2017. (Indig, A.) (Entered: 09/28/2017)
09/28/2017	53	CLERK'S JUDGMENT - that the respondent is committed to the custody and care of the Attorney General pursuant to 18 U.S.C. § 4248. Signed by Peter A. Moore, Jr., Clerk of Court on 9/28/2017. (Indig, A.) (Entered: 09/28/2017)
10/02/2017	54	Notice of Appeal filed by Blake Charboneau as to 53 Clerk's Judgment. Filing fee. (Shea, Katherine) (Entered: 10/02/2017)
10/02/2017	55	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals regarding 54 Notice of Appeal filed by Blake Charboneau. (Indig, A.) (Entered: 10/02/2017)
10/03/2017	56	US Court of Appeals Case Number 17-7306 (Amy L. Carlheim, Case Manager) as to 54 Notice of Appeal filed by Blake Charboneau. (Indig, A.) (Entered: 10/03/2017)
10/03/2017	57	ORDER of US Court of Appeals as to 54 Notice of Appeal filed by Blake Charboneau. The court appoints the Federal Public Defender for the Eastern District of North Carolina to represent Blake Charboneau in this case. (Indig, A.) (Entered: 10/03/2017)
10/23/2017	58	OFFICIAL TRANSCRIPT for dates of 9/28/2017, before Chief Judge James C. Dever, III, regarding 54 Notice of Appeal. Court Reporter: Lori Russell (Middle District of NC Official Reporter). Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Does this satisfy all appellate orders for this reporter? Yes. Please review Attorney obligations regarding the redaction of electronic transcripts of court proceedings available on the court's

		website . Redaction Request due 11/16/2017. Redacted Transcript Deadline set for 11/26/2017. Release of Transcript Restriction set for 1/24/2018. (Foell, S.) (Entered: 10/23/2017)
10/23/2017		NOTICE of Filing of Official Transcript 58 Appeal Transcript. The parties have seven calendar days from the filing of the transcript to file a Notice of Intent to Request Redaction. The parties must also serve a copy on the court reporter or transcriber. After filing the Notice of Intent to Request Redaction, a party must submit to the court reporter or transcriber, within 21 calendar days of the filing of the transcript, a written statement indicating where the personal data identifiers to be redacted appear in the transcript. (Foell, S.) (Entered: 10/23/2017)
12/12/2017	59	OFFICIAL TRANSCRIPT of BENCH TRIAL for the date of January 27, 2017, before Chief District Judge James C. Dever III, regarding 54 Notice of Appeal. Court Reporter/Amy Condon. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Does this satisfy all appellate orders for this reporter? - Yes. Please review Attorney obligations regarding the redaction of electronic transcripts of court proceedings available on the court's website . Redaction Request due 1/5/2018. Redacted Transcript Deadline set for 1/15/2018. Release of Transcript Restriction set for 3/15/2018. (Condon, A.) (Entered: 12/12/2017)
12/12/2017		NOTICE of Filing of Official Transcript 59 Appeal Transcript. The parties have seven calendar days from the filing of the transcript to file a Notice of Intent to Request Redaction. The parties must also serve a copy on the court reporter or transcriber. After filing the Notice of Intent to Request Redaction, a party must submit to the court reporter or transcriber, within 21 calendar days of the filing of the transcript, a written statement indicating where the personal data identifiers to be redacted appear in the transcript. (Condon, A.) (Entered: 12/12/2017)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:15-HC-

UNITED STATES OF AMERICA,)	
Petitioner,)	
)	
v.)	<u>CERTIFICATION OF A SEXUALLY</u>
)	<u>DANGEROUS PERSON AND PETITION</u>
BLAKE CHARBONEAU,)	
Register Number 05318-059,)	
Respondent.)	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby submits the attached Certification of a Sexually Dangerous Person pursuant to Title 18 U.S.C. § 4248(a).

Based on the above, the United States hereby petitions the Court to commit Respondent to the custody of the Attorney General, pursuant to 18 U.S.C. § 4248(d).

Respectfully submitted, this 3rd day of December, 2015.

THOMAS G. WALKER
United States Attorney

BY: /s/ G. Norman Acker, III
G. NORMAN ACKER, III
Assistant United States Attorney
Deputy Chief, Civil Division
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Email: norman.acker@usdoj.gov
NC Bar No. 12839
Attorney for Petitioner

CERTIFICATE OF SERVICE

This is to certify that I have this 3rd day of December, 2015, served a copy of the foregoing upon Respondent in this action by placing the documents in an envelope marked as stated below, and placing the envelope in the U.S. mail for delivery to:

BLAKE CHARBONEAU
Reg. No. 05318-059
FCI Butner
PO Box 1000
Butner, NC 27509

and on the same day served a copy of the foregoing by placing a copy in the U.S. Mail, addressed as follows:

Office of the Federal Public Defender
150 Fayetteville Street Mall
Suite 450
Raleigh, North Carolina 27601

/s/ G. Norman Acker, III
G. NORMAN ACKER, III
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NC Bar No. 12839
Attorney for Petitioner

CERTIFICATION OF A SEXUALLY DANGEROUS PERSON

(1) I, Ivonne E. Bazerman, am Chairperson of the Federal Bureau of Prisons (Bureau) Certification Review Panel, Washington, D.C. Pursuant to 28 C.F.R. § 0.97, the Director of the Bureau has delegated to me the authority to certify persons in Bureau custody as sexually dangerous, as authorized by 18 U.S.C. § 4248.

(2) Bureau records reflect the following: Inmate Blake Charboneau, Register Number 05318-059, is in Bureau custody at the Federal Correctional Institution, Butner, North Carolina, in service of a 36-month term of imprisonment and a 24-month term of supervised release following his conviction for a Supervised Release Violation for Sexual Contact with Person Incapable of Consenting, (D.S.D.) (Case No. 5:02CR50076-01), for performing cunnilingus on the victim who was not capable of consent. His projected release date is February 21, 2016.

(3) Based on a review of his Bureau records, I certify he is a sexually dangerous person as defined by 18 U.S.C. § 4247(a)(5), and sexually dangerous to others as defined by 18 U.S.C. § 4247(a)(6). My certification is based on information found in Bureau records which includes, but is not limited to, the following:

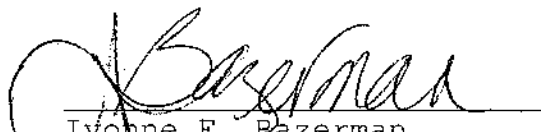
(a) He previously engaged or attempted to engage in sexually violent conduct or child molestation as evidenced

by his current offense conduct and prior convictions for: Assault, U.S. District Court, North Dakota (Docket No. C2-82-15-01), for slapping and hitting the victim while attempting to sexually assault her by force; Aggravated Sexual Abuse by Force, U.S. District Court, North Dakota (Docket No. C2-88-54-01), for forcibly having sexual intercourse with his 10-year old daughter;

(b) A psychological review and assessment indicated the following diagnoses: Alcohol Use Disorder, In a Controlled Environment; Inhalant Use Disorder, In sustained Remission; Adult Sexual Abuse by Nonspouse or Nonpartner (perpetrator); Child Sexual Abuse (Perpetrator);

(c) A review and assessment of him using an actuarial risk assessment instrument (Static-99R) was conducted. This result, in addition to his prior offense conduct, lack of emotionally intimate relationships with adults, lifestyle impulsivity and resistance to rules and supervision, indicate he will have serious difficulty refraining from sexually violent conduct or child molestation if released.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.


Ivonne E. Bazerman
Chairperson
Certification Review Panel
Federal Bureau of Prisons

8/20/2015
Date

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:15-HC-

UNITED STATES OF AMERICA,)	
Petitioner,)	
)	
v.)	<u>O R D E R</u>
)	
BLAKE CHARBONEAU,)	
Register Number 05318-059,)	
Respondent.)	

At the request of the Director of the Bureau of Prisons, the government has filed a Certification of a Sexually Dangerous Person pursuant to 18 U.S.C. § 4248, in order for this Court to hold a hearing to determine whether Respondent is a sexually dangerous person as defined by 18 U.S.C. § 4247(a)(5).

Respondent, having demonstrated eligibility for appointment of counsel at government expense, the Federal Public Defender is directed to provide representation in this action.

The Court further determines that the Respondent is unable to pay the fees of any witness, and pursuant to Federal Rule of Criminal Procedure 17(b) the Clerk shall issue a subpoena for any witness necessary to present an adequate defense to the pending charge or charges.

The Court further ORDERS that the United States Marshal shall serve any subpoenas presented to him in this case by the office of the Federal Public Defender, and shall pay the appropriate fees and

expenses to witnesses so subpoenaed.

Pursuant to 18 U.S.C. section 4247(b), the Court ORDERS the appointment of a mental health examiner of the Respondent's choosing. Pursuant to this section, if the Respondent wishes to request an additional examiner, he shall request such by separate motion to this court.

Any and all future forensic reports, and other such psychological and psychiatric reports or documents relevant to this case, whether such reports are produced by the Federal Bureau of Prisons, independent examiners appointed by order of this Court, or other mental health professionals, shall be filed with this Court under seal, without need of further motion to seal, by either party. Further the Clerk is DIRECTED to permanently seal these reports in accordance with Local Civil Rule 79.2(b), E.D.N.C.

The Court hereby notifies the parties that in light of the provisions of the Amended Standing Order of the Court filed October 21, 2013, the parties will not be required to conduct an initial scheduling conference pursuant to Fed. R. Civ. P. 26(f).

This ____ day of December, 2015.

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:15-HC-2287-D

UNITED STATES OF AMERICA)	
)	
Petitioner,)	JOINT
)	PRE-TRIAL ORDER
v.)	PURSUANT TO L.R. 16.1(c)
)	E.D.N.C
BLAKE CHARBONEAU,)	(Second Amended)
)	
Respondent.)	

I. STIPULATIONS:

1. All parties are properly before the Court.
2. The Court has jurisdiction of the parties and the subject matter.
3. All parties have been correctly designated.
4. There is no question as to misjoinder or non-joinder of the parties.
5. This action arises under the Adam Walsh Act, Title 18, United States Code, Section 4248 and this Court has original exclusive jurisdiction.
6. Venue of this matter is proper.
7. Copies of all official documents, documents kept in the ordinary course of business, and all production exchanged during discovery in this matter are genuine and authentic.

8. At trial, the parties will submit a Joint Trial Notebook, which will contain the exhibits to which the parties have stipulated to the authenticity and admissibility.

II. CONTENTIONS:

A. PETITIONER

1. Facts:

- (a) On December 3, 2015, Respondent Blake Charboneau ("Charboneau") was certified as a sexually dangerous person pursuant to 18 U.S.C. § 4248.
- (b) At the time of his certification, Charboneau was in custody of the Federal Bureau of Prisons at the Federal Correctional Institution in Butner, North Carolina, serving a 36-month term of imprisonment to be followed by a 24-month term supervised release, as a result of Charboneau's imprisonment for violating his supervised release related to Charboneau's supervised release violation for sexual contact with person incapable of consenting. Charboneau's initial conviction arose out of his conviction after a jury trial for engaging in a sexual act by using force, in violation of 18 U.S.C. § 2241(a)(1).
- (c) Charboneau's release date on the above-referenced offense was February 21, 2016.

2. Issues:

- (a) Has Charboneau engaged in or attempted to engage in sexually violent conduct or child molestation?
- (b) Is Charboneau sexually dangerous in that he

suffers from a serious mental illness, abnormality or disorder, and as a result of his serious mental illness, abnormality or disorder, would have serious difficulty in refraining from sexually violent conduct or child molestation if released?

B. RESPONDENT

1. Facts:

- (a) On December 9, 2003, Mr. Charboneau pleaded guilty but mentally ill in South Dakota state court to Sexual Contact with a Person Incapable of Consenting. He was sentenced to 10 years of incarceration. As he was on federal supervised release at the time of this offense, he also received a 36-month sentence of incarceration in the BOP for supervised release violation, consecutive to the state sentence. His projected release date from the federal sentence was February 21, 2016, with 24-months of federal supervised release to follow. This sexual offense involved Mr. Charboneau's 25-year-old niece.
- (b) Mr. Charboneau's federal supervised release stemmed from a 1988 conviction after trial by jury of aggravated sexual abuse by force. This sexual offense involved a minor victim.

2. Issues:

- (a) Has Mr. Charboneau engaged in or attempted to engage in sexually violent conduct or child molestation?
- (b) Does Mr. Charboneau presently suffer from a serious mental illness, abnormality or disorder?
- (c) If so, as a result of the serious mental

illness, abnormality or disorder, would Mr. Charboneau have serious difficulty in refraining from sexually violent conduct or child molestation if released from BOP custody?

II. EXHIBITS

A. PETITIONER:

No.	Description	Bates Stamp #s	OBJECTION
1	Certification of a Sexually Dangerous Person.	2091-93	
2	CV of Dr. Christopher North.	N/A	
3	Evaluation for Civil Commitment as Sexually Dangerous Person by Dr. Christopher North.	1613-42	
4	CV of Dr. Heather Ross.	N/A	
5	Forensic Pre-Certification Evaluation Report by Dr. Heather Ross.	527-45	
6	CV of Dr. Zinik.	N/A	
7	Evaluation for Civil Commitment as Sexually Dangerous Person by Dr. Zinik.	1643-74	
8	July 8, 2014, Letter from the Charboneau Family regarding Respondent's release.	155-56	
9	Judgment in a Criminal Case, <u>US v. Charboneau</u> , 5:02CR50076-01 (for revocation of supervised release), Dated November 23, 2004.	726-30	

10	Supplemental presentence/adjustment report supervised release violation.	8-11	
11	Amended Judgment, <u>State of South Dakota v. Charboneau</u> , File No. 51C03002441AO, Dated January 9, 2004	1489-91	
12	Complaint, <u>State of South Dakota v. Charboneau</u> , Dated July 14, 2003.	1492	
13	Transcript, <u>State of South Dakota v. Charboneau</u> , Court file No. 03-2441, Dated July 28, 2003.	175-201	
14	Judgment in a Criminal Case, <u>US v. Charboneau</u> , C2-88-54-01, Dated January 4, 1990.	747-50	
15	Judgment and Commitment Pursuant to 18 U.S.C. 4244(d), <u>US v. Charboneau</u> , C2-88-54-01, Dated November 30, 1988.	767-68	
16	Presentence report, <u>US v. Charboneau</u> , C2-88-54-01, Dictated November 19, 1988.	140-54	
17	Verdict Sheet, <u>US v. Charboneau</u> , C2-88-54, Dated October 27, 1988.	1516	
18	Certificate of Recovery and Request to Discharge from Psychiatric Hospitalization.	804	
19	Judgment and Commitment Order, <u>United States v. Charboneau</u> , C2-82-15-01, Dated August 13, 1982.	2001	
20	Docket Sheet, <u>United States v. Charboneau</u> , C2-82-15-01.	2002-03	
21	Deposition of Respondent Blake Charboneau, <u>US v. Charboneau</u> , No. 5:15-HC-2075-FL.	N/A	
22	Request for Admission No. 4, <u>US v. Charboneau</u> , No. 5:15-HC-2075-FL.	N/A	
23	Informed Consent to Participate in Sex Offender Treatment form executed by Respondent on February 22, 2016	1712-14	
24	BOP Psychological Services CTP - Clinical Contact	1715	

25	CV of Dr. Kara Holden	N/A	
26	Initial Treatment Plan Psychological Testing Report Commitment and Treatment Program	1794-1802	
27	Bureau of Prisons Psychology Services CTP - Clinical Contact	1805	
28	Bureau of Prisons Commitment and Treatment Program Initial Assessment	1806-12	

Petitioner reserves the right to designate and use any exhibits identified by Respondent in this action.

B. RESPONDENT

No.	Description	Bates Stamp #s	
1	CV of Dr. Joseph Plaud	RESP_CHAR 18-56	
2	Evaluation and Expert Report of Dr. Joseph Plaud	RESP_CHAR 1-17	
3	Deposition of Dr. Gary Zinik, US v. Charboneau, No. 5:15-HC-2287-D	N/A	

Respondent reserves the right to designate and use any exhibits identified by Petitioner in this action.

IV. DESIGNATION OF PLEADINGS AND DISCOVERY MATERIALS

A. PETITIONER

Petitioner designates the entire pleadings and responses and the transcript of the following deposition for purposes of cross-examination: Respondent Blake Charboneau. Petitioner

reserves the right to use, as necessary, all portions of these documents, as appropriate, pursuant to the Federal Rules of Evidence and the Local Rules.

B. RESPONDENT

Petitioner designates the entire pleadings and responses and the transcript of the following deposition for purposes of cross-examination: Dr. Gary Zinik. Respondent reserves the right to use, as necessary, all portions of these documents, as appropriate, pursuant to the Federal Rules of Evidence and the Local Rules.

V. WITNESSES

A. PETITIONER

Name	Address	Proposed Testimony
Dr. Christopher North	PMB #224, 1717 East Vista Chino, Suite A7 Palm Springs, CA 92262 (760) 325-7299	Expert Testimony re: Issues (a) and (b) identified by Petitioner
Dr. Gary Zinik	1280 So. Victoria Ave., Suite 230 Ventura, CA 93003 Phone (805) 650-3327	Expert Testimony re: Issues (a) and (b) identified by Petitioner;
Dr. Heather Ross	Federal Correctional Complex P.O. Box 1000 Butner, NC 27509 (919) 575-3900	Expert Testimony re: Issues (a) and (b) identified by Petitioner;
Dr. Kara Holden	Federal Correctional Complex P.O. Box 1000	Expert Testimony re: Respondent's treatment progress

	Butner, NC 27509 (919) 575-3900	
Respondent Blake Charboneau	Federal Correctional Complex P.O. Box 1000 Butner, NC 27509	Testimony re: prior offenses and convictions, facts relating to same, and institutional conduct

Petitioner reserves the right to call any witness listed by Respondent in this Pretrial Order. Petitioner reserves the right to call rebuttal witnesses, as appropriate.

B. Respondent

Name	Address	Proposed Testimony
Dr. Joseph Plaud	12 Gloucester Street, Number Two Boston, MA 02115-1700	Expert Testimony re: Issues (a), (b) and (c) as identified by Respondent.
Respondent Blake Charboneau	Federal Correctional Complex P.O. Box 1000 Butner, NC 27509	Testimony as to prior offenses, sexual history, and release plan.

Respondent reserves the right to call any witness listed by Petitioner in this Pretrial Order. Respondent reserves the right to call rebuttal witnesses, as appropriate.

The parties reserve the right to amend the pre-trial order to correct any defect in the form of the pre-trial order.

TRIAL TIME ESTIMATE: 1 day.

Respectfully submitted this 13th day of January 2017.

FOR PETITIONER:

JOHNS STUART BRUCE
United States Attorney

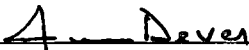
By: /s/ Michael G. James
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N.Y. Bar
LR 57.1 Counsel, Appointed

APPROVED BY:


JAMES C. DEVER, III.
Chief United States District Judge

January 23, 2017.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

UNITED STATES OF AMERICA,
Petitioner
vs.

BLAKE CHARBONEAU,
Respondent.

5:15-HC-2287-D

JANUARY 27, 2017
BENCH TRIAL
BEFORE THE HONORABLE JAMES C. DEVER III
CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:

On Behalf of the Government:

MICHAEL JAMES, ASSISTANT U.S. ATTORNEY
CHRISTOPHER M. ANDERSON, ASSISTANT U.S. ATTORNEY
U.S. Attorney's Office
New Bern Avenue, Suite 800
Raleigh, North Carolina 27601

On Behalf of the Respondent:

HALERIE F. MAHAN, FEDERAL PUBLIC DEFENDER
KATHERINE E. SHEA, FEDERAL PUBLIC DEFENDER
Federal Public Defender's Office
150 Fayetteville Street, Suite 450
Raleigh, North Carolina 27601

AMY M. CONDON, CSR, RPR
Official Court Reporter
United States District Court
Raleigh, North Carolina
Stenotype with computer-aided transcription

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(Friday, January 27, 2017 commencing 9:00 a.m.)

P R O C E E D I N G S

THE COURT: Good morning, and welcome to the United States District Court for the Eastern District of North Carolina.

We're here today in the Adam Walsh matter, United States versus Charboneau. Am I pronouncing that right, Ms. Shea?

MS. SHEA: Yes, Your Honor.

THE COURT: Good morning, Mr. James. Good morning, Mr. Anderson.

MR. JAMES: Good morning, Your Honor.

THE COURT: Is the United States ready to proceed?

MR. JAMES: We are, Your Honor.

THE COURT: Is the Respondent ready to proceed?

MS. SHEA: Yes, Your Honor.

THE COURT: I have reviewed the materials. I didn't see any objections in the pretrial order; is that correct?

MR. JAMES: That's correct. And at this time, as we have done in numerous 4248 cases, with consent of counsel, we will at this time move to admit in evidence the pretrial notebook.

THE COURT: And all the exhibits in the pretrial notebook?

MR. JAMES: That's correct.

09:02 1 THE COURT: For both Petitioner and Respondent are
2 received and accepted into evidence. And as in past cases,
3 unless either of you all wanted to be heard, all of the doctors
4 are experts in their respective fields and I accept them as
09:02 5 such and I've heard them testify before.

6 (Pretrial notebook admitted into evidence.)

7 MR. JAMES: You beat me to the punch, that's correct.
8 There is one doctor, Dr. Holden, she's the treating
9 psychologist. She hadn't testified before this Court before so
09:02 10 I may ask some background information.

11 THE COURT: That's fine. All right.

12 Any other preliminary matters from the Government?

13 MR. JAMES: No, Your Honor.

14 THE COURT: Any other preliminary matters from the
09:03 15 Respondent?

16 MS. SHEA: No, Your Honor. Thank you.

17 THE COURT: Does the Government want to make an
18 opening statement?

19 MR. JAMES: Yes, my very able counsel, Mr. Anderson,
09:03 20 will do that for us.

21 THE COURT: Good morning again, Mr. Anderson.

22 MR. ANDERSON: Good morning.

23 As the evidence will show today, Your Honor,
24 Mr. Charboneau has previously committed or attempted to commit
09:03 25 acts of sexually violent conduct or child molestation. His

09:03 1 offenses in 1982, 1987, 1988, and 2003 all qualify.

2 In addition, Your Honor, the evidence will show that
3 Mr. Charboneau suffers from serious mental illnesses,
4 abnormalities or disorders. Specifically, all four examiners
09:03 5 agree that Mr. Charboneau suffers from alcohol use disorder,
6 severe in a controlled environment and inhaling use disorder,
7 severe and sustained remission.

8 Dr. Gary Zinik, who is the Government's examiner in
9 this case, and Dr. Christopher North, who is the
09:04 10 Court-appointed examiner, also agrees that Mr. Charboneau
11 suffers from inhalant-induced mild neurocognitive disorder.
12 And Dr. Zinik also diagnosed his other specified personality
13 disorder as schizoid and schizotypal features. The serious
14 mental disorders, Your Honor, those in turn drive
09:04 15 Mr. Charboneau's sexually offending.

16 As the evidence will show today, the grip of
17 Mr. Charboneau's alcohol use disorder is profound despite
18 repeated substance abuse treatment and despite repeated arrests
19 and incarceration for alcohol-induced crimes, Mr. Charboneau
09:04 20 continues to seek and consume alcohol when he's in the
21 community.

22 Mr. Charboneau denies he has any sort of alcohol
23 problem, but as Dr. Zinik will explain, alcohol is, in fact,
24 Mr. Charboneau's drug of choice. It is, in fact, his most
09:04 25 persistent addiction; and it is, in fact, his sole

09:04 1 preoccupation when he's in the community. And when
2 Mr. Charboneau drinks, he becomes sexually aroused, but he also
3 becomes disinhibited and he cannot understand or control his
4 sexual urges. The sexual urges instead overwhelm him and he
09:05 5 acts out sexually just as he did in 1982, 1987, 1988 and in
6 2003. Mr. Charboneau was drunk all four times that he either
7 raped or tried to rape his intended victim.

8 But his most recent offense in 2003, that one is
9 perhaps the most telling. Despite community-based substance
09:05 10 abuse treatment, despite community-based sex offender
11 treatment, despite a supportive living arrangement that was
12 designed to prevent alcohol relapse, and despite federal
13 supervision, Mr. Charboneau still bought whiskey, got drunk and
14 tried to rape his niece. And that history, Your Honor, shows
09:05 15 that Mr. Charboneau cannot control his sexual urges when he's
16 intoxicated.

17 And, in fact, Mr. Charboneau seems to agree. As the
18 Court will hear today, Mr. Charboneau admitted that when he
19 raped his daughter in 1988, he felt a loss of control.

09:06 20 Mr. Charboneau admitted that when he tried to rape his niece in
21 2003, he was out of control.

22 And in December, 2016, Your Honor, barely one month
23 ago, Mr. Charboneau admitted that he is sexually dangerous.

24 Dr. Kara Holden is Mr. Charboneau's sex offender
09:06 25 treatment provider in BOP and will testify about that today.

09:06 1 Based on all of that, Your Honor, Dr. Zinik,
2 Dr. North and BOP's forensic examiner, Dr. Heather Ross, all
3 three are unanimous in this case. All three agree that if
4 released, Mr. Charboneau will undoubtedly return to alcohol and
09:06 5 sexual offending.

6 Now, Mr. Charboneau, as I said, is in sex offender
7 treatment in BOP, but he has not completed the program. In
8 fact, he's only just begun the program. He also is not
9 currently enrolled in substance abuse treatment.

09:06 10 As the evidence will show, Mr. Charboneau needs both
11 sex offender treatment and substance abuse treatment in order
12 to be safe for release to the community. Otherwise, Your
13 Honor, Mr. Charboneau will be, as he has always been, unable to
14 control his urge to drink alcohol and, in turn, unable to
09:07 15 refrain from sexually violent conduct or child molestation.

16 And for all those reasons, Your Honor, the United
17 States respectfully requests that the Court find Mr. Charboneau
18 as a sexually dangerous person who satisfies the criteria for
19 civil commitment under the Adam Walsh Act.

09:07 20 Thank you.

21 THE COURT: Thank you, Mr. Anderson.

22 Ms. Shea or Ms. Mahan?

23 MS. SHEA: Thank you, Your Honor.

24 The Government in this case wants to change the
09:07 25 question in the statute. The question before this Court is

09:07 1 whether Mr. Charboneau will have serious difficulty refraining
2 from sexual -- sexually violent conduct or child molestation if
3 released.

4 The Government wants the question to be instead
09:07 5 whether Mr. Charboneau will have serious difficulty refraining
6 from having a drink if released.

7 You see, Your Honor, this is a case that involves no
8 paraphilia, no evidence whatsoever that Blake Charboneau has a
9 sexually deviant interest, no evidence whatsoever that Blake
09:08 10 Charboneau is motivated to commit sex offenses by an underlying
11 sexual disorder.

12 The diagnosis that the Court will hear about today is
13 not a paraphilia, nor is it even a personality disorder.
14 Rather it is this alcohol dependence disorder, alcoholism.

09:08 15 And the questions that today's hearing will center
16 around is whether Mr. Charboneau's alcoholism is sufficient to
17 meet Prong 2 of the statute and whether the Government can show
18 by clear and convincing evidence that his alcoholism will cause
19 him serious difficulty refraining from re-offending if
09:08 20 released.

21 Judge, the causal link in this case will simply be
22 too attenuated. They cannot show by clear and convincing
23 evidence that his alcoholism will cause him serious difficulty
24 refraining from sexually re-offending. And indeed this causal
09:09 25 link between alcoholism and sexual offending is a tricky one.

09:09 1 And indeed it's something that our courts have struggled with
2 since the inception of the Adam Walsh Act.

3 Indeed, the Fourth Circuit has never upheld that
4 alcoholism alone is enough to satisfy the second prong of the
09:09 5 Adam Walsh Act.

6 All the experts will agree that Mr. Charboneau has
7 never committed an act of sexual violence when sober. They
8 will agree that his criminal history includes many nonsexual
9 offenses committed under the influence of alcohol. They will
09:09 10 all agree that he has been incarcerated for 13 years and there
11 is not a shred of evidence that he's ever had any alcohol in
12 the prison; that he has been sober now for 13 years. They will
13 also have to agree that he has had near perfect prison conduct,
14 incurring only one very minor infraction, and he must serve two
09:10 15 years of supervised release upon his release from Butner.

16 In light of all these factors, the Court will be left
17 with a firm belief that his alcoholism does not meet Prong 2
18 and that the Government has not shown by clear and convincing
19 evidence that his alcoholism will cause him serious difficulty
09:10 20 refraining from re-offending if released and we will ask this
21 Court to find in favor of the Respondent.

22 THE COURT: Thank you, Ms. Shea.

23 The United States may call its first witness.

24 MR. JAMES: Thank you, Your Honor.

09:10 25 At this time the United States calls Dr. Kara Holden.

K. Holden - Direct Examination

09:10 1 KARA HOLDEN, PSY.D

2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. JAMES:

09:11 5 Q. Good morning, Dr. Holden.

6 A. Good morning.

7 Q. Okay. Dr. Holden, to your left there's a trial notebook,
8 and I believe exhibits that are pertinent to you begin around
9 Exhibit No. 24. I made points to refer you to some of those
09:11 10 exhibits.

11 Now, Exhibit No. 25, that contains your CV, for the
12 record. And I want to ask you just a few questions about that
13 before moving on to some other matters regarding
14 Mr. Charboneau's treatment and his progress; okay?

09:12 15 A. Okay.

16 Q. Basically, the CV, I see that you have a BA in psychology
17 and criminal justice, a double major.

18 A. That's correct.

19 Q. And why did you choose a double major?

09:12 20 A. Initially, I was interested in criminal profiling. I
21 think the career was on the rise in the media, but however,
22 after externship in a prison environment I was more inspired by
23 helping individuals with mental health illnesses and working to
24 rehabilitate and to prevent the revolving door of mental health
09:12 25 inmates in the criminal justice system.

K. Holden - Direct Examination

Q. I see that you got your Master's degree in clinical psychology at Virginia State University. Why did you choose clinical psychology over research psychology?

A. My goal was to pursue my Psy.D versus pursuing my Ph.D.

Psy.D are more focused on retro programs, are heavy-owned clinical experience and therapeutic experience compared to research experience. And I knew my goal was to work directly with patients and help patients rather than research them.

Q. You then received a Ph.D from the American School of Psychology at Argosy University.

A. Yes. Psy.D. Doctor of psychology.

Q. What did you say?

A. You said Ph.D., Psy.D.

Q. Oh, excuse me.

I see that during that time you also did an internship, doctoral internship at Butner; is that correct?

A. Yes.

Q. That was between 2009 and 2010?

A. That's correct.

Q. What did you do there?

A. I worked with the Step-Down program with chronically mental ill patients and also with the general population and also a rotation with forensics, forensic psychology.

Q. Now, after you graduated from Argosy, you worked at the Harnett County Correctional Institution as a staff

K. Holden - Direct Examination

09:14 1 psychologist; is that correct?

2 A. Yes, that's correct.

3 Q. Why did you choose that facility?

4 A. I was able to work with sex offenders directly. Just
09:14 5 through my graduate program I learned about the traumatic
6 impact that sexual abuse has on victims and I knew I wanted to
7 work with inmates, specifically sex offenders, to reduce the
8 rate of recidivism and hopefully not create any more victims by
9 not sexually offending.

09:15 10 Q. And while you were there, you conducted group and
11 individual sex offender treatment services?

12 A. Yes.

13 Q. Did you also conduct education and therapeutic groups in
14 the area such as anger management, assertiveness and
09:15 15 problem-solving skills and relapse prevention?

16 A. Yes.

17 Q. And from there you worked at Tabor Correctional
18 Institution as a staff psychologist?

19 A. That's correct.

09:15 20 Q. Why did you choose Tabor?

21 A. Well, they -- it was a staff psychology position. I was
22 able to receive student loan repayment. It's a hard-to-fill
23 area and I was able to just hone my skills as a therapist with
24 the general population.

09:15 25 Q. When you say hard-to-fill area, what do you mean by that?

K. Holden - Direct Examination

09:15 1 A. It's a rural area so it's difficult to fill medical and
2 mental health physicians, so they recruit therapists and
3 medical professionals.

09:16 4 Q. While you were there in Tabor you also conducted group
5 therapy and crisis intervention as well as consulting with the
6 medical correctional staff; is that correct?

7 A. Yes.

8 Q. All right. Then you worked at FCI Williamsburg as a staff
9 psychologist?

09:16 10 A. That's correct.

11 Q. And now you currently work at FCI Butner; is that correct?

12 A. Yes.

13 Q. You are in the commitment and treatment program?

14 A. Yes.

09:16 15 Q. And you work with Dr. Hernandez?

16 A. Yes.

17 Q. And what are your duties as a clinical psychologist in the
18 commitment and treatment program?

19 A. Individual treatment, group therapy and as-needed
09:16 20 assessments, treatment planning.

21 MR. JAMES: Your Honor, based on the witness'
22 experience, at this time we tender the witness as an expert in
23 the field of sex offender treatment.

24 THE COURT: All right. She will be received.

09:17 25 BY MR. JAMES:

K. Holden - Direct Examination

09:17 1 Q. All right. Dr. Holden, you are, in fact, the treating
2 provider for Mr. Charboneau; is that correct?

3 A. Yes.

4 Q. And I know the Court has experience with --

09:17 5 MR. JAMES: Your Honor, I know the Court has
6 experience with what the treatment program is from the *Burkhart*
7 case, but for the record here I'm going to ask the witness a
8 few questions about it.

9 THE COURT: That's fine.

09:17 10 MR. JAMES: Thank you.

11 BY MR. JAMES:

12 Q. Dr. Holden, can you just briefly describe the four phases
13 of the program for the record?

14 A. Okay. If it's okay, I would like to give a little
09:17 15 background of our approach.

16 Q. Sure.

17 A. Okay. Well, CTP is based on the Good Lives Model. The
18 Good Lives Model is a strength-based program which differs from
19 a traditional relapse program. Relapse prevention typically
09:17 20 focuses on triggers such as people, places and things that the
21 inmate has to avoid, but the Good Lives model, what it does is
22 focus on strength base and it allows inmates to become a
23 healthy, well-rounded individual by focusing on certain aspects
24 of life, such as spirituality, wellness, healthy sexual
09:18 25 management and career occupational, and just every area of

K. Holden - Direct Examination

09:18 1 life.

2 And then the CTP is a therapeutic community; that is where
3 the guys live together 24/7, they program together and it
4 promotes a pro-social community environment 24/7 and the
09:18 5 inmates are able to make change through model and behavior from
6 inmates that are in higher phases. And it also allows us the
7 opportunity -- because our offices are right there in the
8 community, it allows us an opportunity to view the inmates and
9 we're able to observe their behaviors and engage with them on a
09:18 10 daily basis and we're able to witness their behaviors rather
11 than just relying on self-report.

12 And then the four phases of the program. Each inmate has
13 to progress through the four phases, and the initial phase is
14 Phase 1, and that's the orientation phase where they're
09:19 15 oriented to the community and the program, and we use that time
16 for observation and for our treatment planning.

17 And then Phase 2 emphasizes pro-social living,
18 citizenship, decreasing criminal behavior as well as fostering
19 interpersonal interactions because a lot of these guys have
09:19 20 social skill deficits.

21 Phase 3 focuses on sexual self-regulation as well as
22 honing in their relapse prevention skills.

23 And Phase 4 is we work directly with U.S. Probation and we
24 prepare the inmates for successful re-entry into the community.

09:20 25 Q. All right. In fact, Mr. Charboneau volunteered for the

K. Holden - Direct Examination

09:20 1 program --

2 A. Yes.

3 Q. -- in February of 2016; is that correct?

4 A. Yes.

09:20 5 Q. In fact, he entered the program on February 22nd, 2016?

6 A. That sounds correct, yes.

7 Q. Now, I believe Exhibit No. 26, that is the initial

8 treatment plan, psychological testing report that you prepared

9 with regard to Mr. Charboneau; is that correct?

09:20 10 A. Yes.

11 Q. And if you turn to page 3 of that document, which is Bates

12 1796, there's a section that notes treatment progress.

13 A. Yes.

14 Q. Do you see that?

09:21 15 A. Uhm-uhm.

16 Q. So this was -- this report, by the way, was prepared on or

17 about October 26th, 2016.

18 A. Yes.

19 Q. Okay. And so this report indicates what his progress was

09:21 20 at that time; is that correct?

21 A. That's correct.

22 Q. All right. Can you just briefly summarize what was his

23 treatment progress at that time?

24 A. At that time when Mr. Charboneau entered the program, he

09:21 25 was extremely reserved, very isolative, he didn't form a bond

K. Holden - Direct Examination

09:21 1 with treatment staff nor had many relationships with peers in
2 the community. But as treatment progressed and he became more
3 comfortable, very slowly, but he became more comfortable with
4 the program and the interactions of the program and more

09:21 5 comfortable with myself and other therapists, he began to
6 engage more in the community; superficially, but he did become
7 more of a participant on the periphery, but he did engage more.

8 Q. Okay. And when you prepared this report, you reviewed his
9 PSR; is that correct?

09:22 10 A. Yes.

11 Q. You reviewed the precertification report prepared by
12 Dr. Ross?

13 A. Yes.

14 Q. You also reviewed what they called BEMR, which is Bureau
09:22 15 Electronic Medical Records?

16 A. Yes.

17 Q. And you also performed or had supervised the
18 administration of a series of tests.

19 MR. JAMES: And those, for the record, Judge, I won't
09:22 20 go into them all, but they are beginning on page 3 to page 6, I
21 believe of the -- page 5 of the report.

22 BY MR. JAMES:

23 Q. Is that correct, Doctor?

24 A. Yes.

09:23 25 THE COURT: Exhibit 26?

K. Holden - Direct Examination

MR. JAMES: Yes, Exhibit 26, Your Honor.

BY MR. JAMES:

Q. One of the tests that you performed was the Multiphasic Sexual Inventory, MSI-II?

A. Yes.

Q. And when that was administered and the results came back, if you look at, I guess beginning the second paragraph.

A. Yes.

Q. Can you summarize that for the Court? You don't have to read the whole thing verbatim, but just summarize that for the Court.

A. Is it okay if I use my highlighted copy?

Q. Sure.

A. Well, overall, it shows that he's very defensive regarding his sexual interests and behaviors and he has a lot of denial in regard to his sexual offenses. And he's very, I guess I could use the word prudish when it comes to sex in general. And he holds an overly moralistic view of sex.

He admits to committing sexual offenses but seriously minimizes having thoughts prior to committing rape, but he did admit he derives excitement from the anticipation of the sexual assault, but he does show signs of denial when it comes to acknowledging and planning his sexual assaults.

He's defensive, again, about his interest in sex and he also attempts to portray that he doesn't have sexual interest

K. Holden - Direct Examination

09:24 1 or problems. And part of the denial and cognitive distortion
2 that he uses is he tends to blame victims or himself as been a
3 victim of injustice to justify his sex offenses.

4 And the test results also reveal that he has anxiety about
09:25 5 his ability to function effectively in social and sexual
6 interactions, especially around age-appropriate females.

7 Q. If you go to the last paragraph before you get to the PAI
8 assessment, it indicates that he admitted receiving treatment
9 for alcohol abuse.

09:25 10 A. Yes.

11 Q. But he denied he has an alcohol problem?

12 A. That's correct. That's what the test results revealed.

13 Q. Now, if you turn to Exhibit No. 28, that is the initial
14 assessment that you prepared on or about December -- it's noted
09:26 15 on the Bureau report December 8, 2016. I'm wrong, excuse me.
16 November 30th, 2016.

17 MR. JAMES: That's beginning at Bates 1807, Judge.

18 THE COURT: Thank you.

19 BY MR. JAMES:

09:26 20 Q. Do you have that, Dr. Holden?

21 A. Yes.

22 Q. You have -- this document, it begins with a PGI title.
23 What does PGI stand for?

24 A. Problem Go Interventions, and they are listed out as the
09:26 25 treatment plan progresses for each factor that we activated.

K. Holden - Direct Examination

09:26 1 Q. And therapeutic alliance, what does that mean to the lay
2 person?

3 A. He's able to build a trusting relationship with
4 therapists, especially myself, but also with other treatment
09:26 5 staff and be able to see us in a trusting role and be able to
6 work with us through treatment.

7 Q. Tell the Court, why is that important?

8 A. That's very important because the treatment process is a
9 very delicate process and he has to be able to feel comfortable
09:27 10 around us to be able to work through some of his issues, and
11 it's also important because he has a lot of denial and a lot of
12 shame that's attached to his sexual offending, and he has to
13 have that bond and that trusting relationship with us to slowly
14 shed those layers of shame and denial because it serves as a
09:27 15 protective mechanism to outweigh those painful emotions that
16 are related to the harm that he's done. So if he trusts us,
17 then he's willing to trust us with his emotions and sharing
18 those things he's done that has caused a lot of difficulty in
19 his life over the past years.

09:28 20 Q. Is he slowly opening up to you?

21 A. He is, slowly. As I said before, it's a very delicate
22 process and Mr. Charboneau is a very reserved individual and
23 very passive. So he slowly -- opening up to a therapist is a
24 normal progression of the treatment process, but with

09:28 25 Mr. Charboneau it's more slow than what we see with the typical

K. Holden - Direct Examination

09:28 1 patient.

2 Q. Now, the rate in which he's opening up to you, is it the
3 same with the other therapists or different?

4 A. No, it's different. He's assigned to my caseload so I
09:28 5 have more contact with him, so he's opening up to me more.

6 He does open up to Dr. Smithson, she's had some contact
7 with him, but with the other therapists such as Dr. Hernandez,
8 our clinical coordinator, and some of the other treatment
9 providers, he's more reserved with them. But we are working on
09:29 10 that. We do role plays for -- smalltalk role plays just so he
11 can engage on a superficial level. I've assigned him an
12 orderly job, that way he works directly with staff members in
13 picking up the trash and any type of minute task they have him
14 perform; that way he is more comfortable with us because if we
09:29 15 are able to build that relationship, then it will help him
16 through the rest of the therapeutic process.

17 Q. For the record, I used the name Dr. Hernandez, and you
18 just mentioned Dr. Smithson. Dr. Hernandez, her first name is
19 Andres Hernandez?

09:29 20 A. Yes.

21 Q. And Dr. Smithson is Dr. Trisha Smithson?

22 A. That's correct.

23 Q. Based on the therapeutic alliance that you developed with
24 Mr. Charboneau, do you believe it would be detrimental to
09:30 25 Mr. Charboneau's treatment if the Court were to release

K. Holden - Direct Examination

09:30 1 Mr. Charboneau and no longer in the CTP?

2 A. It would impede his progress. As I said before, he slowly
3 builds trusting relationships and severing that relationship
4 with impede the progress that he's made and will probably -- he
09:30 5 may become more steep in those denials and cognitive
6 distortions regarding his offenses.

7 Q. Now, the PGI titles, you just talked about one that was
8 therapeutic alliance and I'm going to go through the others
9 very -- I'll summarize the other ones and I may ask you on
09:30 10 certain points to elaborate.

11 A. Okay.

12 Q. You have down participation in the TC, I take that to
13 mean --

14 A. Treatment community, therapeutic community.

09:30 15 Q. That's another goal that you would want him to work on; is
16 that correct?

17 A. Yes.

18 Q. You have negative self-evaluation as one of the goals --

19 A. Yes.

09:31 20 Q. -- is that correct?

21 A. Yes.

22 Q. And why is that important, his negative self-evaluation?

23 A. Mr. Charboneau tends to have a low sense of self-worth,
24 which is flawed because his IQ test shows that he's just as
09:31 25 intelligent as the majority of our guys, but he tends to

K. Holden - Direct Examination

09:31 1 appraise himself based on others and because of that he feels
2 socially inadequate, and interpersonal interactions are
3 relevant to risks of sexual behaviors, sexually offending, so
4 we want to make sure that we increase his social skills.

09:31 5 Q. Problem solving is another one. Can you just elaborate a
6 little bit about problem solving?

7 A. Yes. Mr. Charboneau, he's very likeable in the program.
8 He's very -- he's -- the guys describe him as easy going, laid
9 back. He's very helpful with staff and inmates. Anything we
09:32 10 need, he helps us out; but, however, in the community he takes
11 a passive role, he avoids conflict. So whenever a problem
12 arises, he let's the situation just die out or work itself out
13 or he'll ask others to handle the problem for him and he -- and
14 he's currently sort of in training and he recognizes this is an
09:32 15 issue for him, but he's yet to make any changes on being more
16 assertive.

17 Q. All right. The next two I want you to elaborate for the
18 Court. The PGI title, there's substance abuse and under that
19 there's one for sexual entitlement. Tell the Court why these
09:33 20 are areas that you believe Mr. Charboneau needs to work on.

21 A. Well, substance use, he is diagnosed with alcohol use
22 disorder in a controlled environment and he has a history of
23 inhalant use. During the commission of all his offenses,
24 sexual offenses, he was under the -- he was intoxicated with
09:33 25 alcohol. And normally Mr. Charboneau is not an impulsive man,

K. Holden - Direct Examination

09:33 1 but per his records, with the use of alcohol he becomes
2 under-regulated and more prone to impulsiveness. And right now
3 he does not protest and does not admit to having a substance
4 abuse problem currently, but he is engaged in Alcohol Anonymous
09:33 5 and when we offer another substance abuse class this year he
6 will be enrolled.

7 Q. And how does that impact the next PGI, which is sexual
8 entitlement.

9 A. Mr. Charboneau, he -- per his self-report and historic
09:34 10 information, he felt he was owed sex from women if he perceived
11 they were teasing him. I mean, it doesn't matter if it was a
12 friendly relationship or if it may have been what he deemed as
13 flirting. Because of that, he determined that sex was owed to
14 him and he felt entitled to sex.

09:34 15 Q. And if the substance abuse problem isn't adequately
16 addressed and Mr. Charboneau has a problem with sexual
17 entitlement as you described, what's the impact?

18 A. Per history, it's possible that he would offend.

19 Q. Now, going to the next page there is human sexuality and
09:35 20 adult intimacy and relational instability. In particular, with
21 regard to the adult intimacy and relational instability, why is
22 that important?

23 A. Well, from his -- from his historical records and his
24 self-report it doesn't seem that he's formed a reciprocal
09:35 25 romantic relationship with a partner or a significant other.

K. Holden - Direct Examination

09:35 1 He's had women that have been friends, but not much experience
2 in dating or never been married or had a meaningful friendship,
3 romantic relationship with a woman. And with that he
4 misinterprets the courtship process and he misreads social cues
09:35 5 in those types of situations with women.

6 Q. Now, if someone is misreading social cues, but also using
7 alcohol at the same time, what is the impact on that?

8 A. He typically views that as rejection rather than that
9 someone is uninterested in, they are not interested in sex, he
09:36 10 takes it personally and personalizes it as rejection.

11 Q. The alcohol use, does that act as a dis-inhibitor?

12 A. It does.

13 Q. You also have significant social influences, emotional
14 loneliness and education and/or occupational functioning. Are
09:36 15 those --

16 A. That's correct.

17 Q. These assessments are assessments that are done
18 periodically?

19 A. This is the initial treatment plan. So whenever an inmate
09:37 20 enters the program, we develop a treatment plan. But we review
21 these every six months, so we do amend and alter the treatment
22 plan based on the more information and the behaviors and
23 interactions in the community.

24 Q. Now, if I didn't ask this before, what phase is
09:37 25 Mr. Charboneau in the CTP?

K. Holden - Direct Examination

09:37 1 A. He's in Phase 2. And the phases are oppressive. So we're
2 mainly working on interpersonal interactions and prosocial
3 living and, specifically with him, assertive communication.

4 Q. So if you were to -- if the Court were to commit

09:37 5 Mr. Charboneau, he would have to go through the rest of those
6 phases, the rest of Phase 2, progress on to Phase 3 and into
7 Phase 4?

8 A. Yes.

9 Q. And there's no specific time period; in other words, you

09:37 10 don't say -- it's not like social promotion, you get to go from
11 fifth to sixth grade. You actually have to work towards it; is
12 that correct?

13 A. Yes. They have to show us that they have mastered the
14 competencies and the task within each phase.

09:38 15 Q. Now, let me direct your attention to Exhibit No. 27 -- I'm
16 sorry. Exhibit No. 24, which is dated June 13, 2016.

17 A. Yes.

18 Q. Can you summarize for the Court what occurred, this
19 clinical contact, between you and Mr. Charboneau?

09:38 20 A. Okay. This was early on in treatment and it was during an
21 introductory group. And during our introduction treatments, we
22 introduce the guys to the program and what type of treatment
23 that they'll be receiving and what type of admissions they will
24 have to make.

09:39 25 At that time what I noticed is that Mr. Charboneau was

K. Holden - Direct Examination

09:39 1 really steep in denial and minimization regarding his offenses,
2 and he used several cognitive distortions and even minimized
3 his behavior. Rather than admitting to a sexual assault, he
4 referred to it as tearing the victim's shirt off and slapping
09:39 5 her.

6 Q. Now, you have an example here, second sentence: When
7 referring to the victim, he stated that if she did not violate
8 the rules of the halfway house by being there after hours and
9 doing drugs with her boyfriend who was a resident, then he
09:40 10 would not have sexually assaulted her.

11 A. Yes. That's one of the distortions that he uses.

12 He tends to, like I said earlier, he has a lot of shame
13 that's attached to these offenses. And so what he does is he
14 justifies the offenses; that way he doesn't have to face the
09:40 15 harmful impact of his crimes and he is -- it's easier for him
16 to blame others in situations than accept full responsibility
17 for the offenses.

18 So in this specific situation, one of his victims, he was
19 living in a halfway house at that time, and his victim
09:40 20 frequented the halfway house, which was a violation of the
21 halfway house rules. And how he justifies the offense is that
22 if she were not at the halfway house begging for money, asking
23 for drugs and alcohol or cigarettes, then he would never have
24 assaulted her.

09:41 25 Q. If you look at the next to last sentence, it says: He

K. Holden - Direct Examination

09:41 1 justifies sexual assault because the victim is not a family
2 member.

3 A. Yes, it's an irrational distortion. It's illogical, but
4 from what I understand, in his mind, he believes that if the
09:41 5 victim is not a relative, then the sexual assault is justified.

6 So even though some of his victims were relatives, he
7 disowned them or denounced the kinship. It's illogical, but
8 that's one of his distortions that he uses.

9 Q. When you say "denounce the kinship," are you referring to
09:41 10 the self-report of his to you that he claims that his children
11 weren't his children?

12 A. Yes, his children were not his children or his niece
13 wasn't related to him. Just -- just he'll deny the relations.

14 Q. Now, if you turn to Exhibit No. 27. This is your clinical
09:42 15 contact that occurred on December 9th, 2016.

16 A. That's correct.

17 Q. And I want you to summarize to the Court about this
18 clinical contact.

19 A. Like I said, Mr. Charboneau is -- he's progressing through
09:42 20 the program. He's doing well. It's very slowly. He tends to
21 hold on to distortions longer than the typical patient, but he
22 is starting to recognize that he does, indeed, have a sexual
23 deviance issue, and he admitted to me that -- well, he held
24 himself accountable in our community meeting, that's the
09:43 25 platform for our participants to hold themselves accountable,

K. Holden - Cross-Examination

09:43 1 and he admitted that he did indeed think about having sex with
2 women prior to the assault. And previously, he said he never
3 thought about it and even as so much denied the assaults in
4 general.

09:43 5 So he's finally admitting that he does have a sexual
6 deviance problem and he understands that he needs treatment
7 because he has hurt people in the past and he does not want to
8 continue that pattern. So he recognizes that he needs
9 treatment to address the sexual deviance issues.

09:43 10 Q. In your last sentence you indicate that, he told me that
11 he's sexual dangerous.

12 A. Yes, I believe he's saying that he needs treatment to
13 address his sexual deviance problem.

14 Q. And when you write down these clinical notes, you only
09:44 15 write down what you believe he had stated accurately to you; is
16 that correct?

17 A. Yes. I never -- I always have him clarify what he's
18 saying, and I always -- if I put it in a note, then I'm sure
19 that's what he said.

09:44 20 MR. JAMES: Just one moment, Your Honor.

21 THE COURT: Okay.

22 MR. JAMES: No further questions.

23 THE COURT: Cross-examination?

24 MS. SHEA: Thank you, Your Honor.

09:44 25 CROSS-EXAMINATION

K. Holden - Cross-Examination

09:44 1 BY MS. SHEA:

2 Q. Dr. Holden, you work in the BOP, correct?

3 A. Yes.

4 Q. And specifically in the Maryland unit, correct?

09:44 5 A. Yes.

6 Q. And you're aware that some inmates do actually have their
7 own alcohol in the Maryland unit, correct?

8 A. There have been some inmates that make what we call hooch,
9 yes. We do what we call shakedowns where we search cells on a
09:44 10 regular basis and if we find that, we confiscate it.

11 Q. And there have been people in the Maryland unit that have
12 been caught with it before?

13 A. Since I've been in the program, we did find one guy that
14 was making the alcohol, yes.

09:45 15 Q. And when did you begin?

16 A. December, 2015.

17 Q. Before that there were also instances as well, correct?

18 A. I'm sure there were.

19 Q. You've read reports and you've observed Mr. Charboneau
09:45 20 himself that he does sometimes speak in a convoluted manner,
21 would you agree with that?

22 A. He does have some expressive difficulties where he
23 substitutes words and right now he has been referred to a
24 neuropsychologist for further testing to determine if this is a
09:45 25 neurocognitive disorder or borne out of some type of social

K. Holden - Cross-Examination

09:45 1 anxiety.

2 Q. You've also read reports and you would agree that he often
3 is a poor historian, correct; that he doesn't remember
4 everything that has happened in his early past? Have you read
09:46 5 reports to that effect?

6 A. I would have to look back. I don't want to say yes or no.
7 I would have to look back at some of the reports.

8 Q. Have you read any of the other forensic psychologist
9 reports other than Dr. Ross?

09:46 10 A. Just Dr. Ross' report.

11 Q. You believe that he does have sexually deviant interests,
12 correct?

13 A. Yes.

14 Q. And you've told him that you believe that, correct?

09:46 15 A. Yes. We discussed that, yes.

16 Q. You testified multiple times that he is very ashamed.

17 A. Yes. He does have shame attached to his offenses, he
18 does.

19 Q. In some of your other treatment notes, not the ones in the
09:46 20 binder, some of your other notes, you did actually -- did
21 actually report that he seems sincere about wanting to change
22 his life.

23 A. Yes.

24 Q. And you agree with that today still, correct?

09:47 25 A. Yes.

K. Holden - Redirect Examination

09:47 1 Q. You mentioned several times that your testing showed that
2 he does not acknowledge a problem with alcohol, correct?

3 A. Yes.

4 Q. But you also testified that he goes to AA in the Maryland
09:47 5 unit, correct?

6 A. He does. Mr. Charboneau is very compliant with anything
7 that we recommend. If we recommend that he participate in any
8 group or any treatment, he does participate. But it seems that
9 he does still deny that he has a current alcohol problem, but
09:47 10 he will participate and he will -- any recommendations that we
11 have, he will comply.

12 MS. SHEA: Just a moment, Your Honor.

13 THE COURT: Okay.

14 MS. SHEA: Thank you, Your Honor. No other
09:47 15 questions.

16 THE COURT: Anything else, Mr. James?

17 MR. JAMES: One moment. I just have a few, Judge.
18 Maybe just one or two.

REDIRECT EXAMINATION

09:48 20 BY MR. JAMES:

21 Q. On cross-examination you were asked about Mr. Charboneau's
22 communicative problems. Is it true that that's why you
23 testified that when you write down anything he stated it's
24 because you are sure of it and you cleared it up with him?

09:48 25 A. That's correct. May I elaborate?

K. Holden - Redirect Examination

09:48 1 Q. Yes.

2 A. Sessions with Mr. Charboneau typically last longer than
3 the typical session with other participants because of his
4 expressive difficulties, and I do that just to make sure that

09:48 5 I'm receiving his intended message. And I often have him
6 define words or ask him -- and this is me and other therapists
7 in the community -- and I'll ask him a series of questions to
8 ensure that I understand what he's saying. And if I don't
9 understand, I don't include it in the note and I don't assume

09:49 10 that's what he's saying. He'll tell me if I'm not
11 understanding him or if I do understand him.

12 I'm also able -- I work with Mr. Charboneau, he's been in
13 several of my groups, I see him on a daily basis, informal and
14 formal interactions, so I'm able to gauge his emotions and I'm
09:49 15 learning his language patterns.

16 MR. JAMES: All right. Thank you. No further
17 questions.

18 THE COURT: Ms. Shea?

19 MS. SHEA: Nothing further. Thank you.

09:49 20 THE COURT: Thank you, Doctor. Please watch your
21 step stepping down, ma'am.

22 The United States may call its next witness.

23 MR. JAMES: At this time the United States calls the
24 Court-appointed examiner, Dr. North.

09:49 25

C. North - Direct Examination

CHRISTOPHER NORTH, Ph.D

having been duly sworn, testified as follows:

THE COURT: Good morning, Dr. North. Once you get some water, Mr. James will have some questions for you and then Ms. Shea will have some questions for you. Please try to keep your voice up so we can hear what you have to say.

You may examine the witness.

MR. JAMES: Thank you, Judge.

DIRECT EXAMINATION

BY MR. JAMES:

Q. Good morning, Dr. North.

A. Good morning.

Q. Dr. North, as you've heard, the Court has already admitted you as an expert in this case so I'm going to proceed right to the questions.

A. I'm trying to get this to work properly.

Q. Okay. Well, you let me know if there is something that I say that is unclear or my tongue is so thick it's muddled, then I'll be more than happy to repeat. Okay?

A. Okay.

Q. Okay. Now, you were appointed as the Court examiner in this case, that's correct?

A. Correct.

Q. And you are a clinical psychologist?

A. Yes.

C. North - Direct Examination

09:51 1 Q. And you have testified as an expert in a number of these
2 Adam Walsh Act cases; is that correct?

3 A. Yes.

4 Q. You were appointed back on December 8th, 2015; does that
09:52 5 sound correct?

6 A. Yes.

7 Q. And you interviewed Mr. Charboneau on January 19th, 2016?

8 A. Yes.

9 Q. Since then, you have reviewed additional material
09:52 10 including the reports by Dr. Holden?

11 A. I reviewed BOP records that included reports by her, yes.

12 Q. And the issues that you were asked to examine as an expert
13 in the Adam Walsh case was whether Mr. Charboneau had engaged
14 or attempted to engage in sexually violent conduct or child
09:52 15 molestation; is that correct?

16 A. Yes.

17 Q. The second issue was whether Mr. Charboneau currently
18 suffers from a serious mental illness, abnormality or disorder.

19 A. Yes.

09:52 20 Q. And the third was whether as a result of that serious
21 mental illness, abnormality or disorder, whether Mr. Charboneau
22 has serious difficulty refraining from sexually violent conduct
23 or child molestation.

24 A. Yes.

09:53 25 Q. Now, with regard to issue one, did you so find?

C. North - Direct Examination

09:53 1 A. I found that he has been convicted of three sexually
2 violent offenses; one of which also involved child molestation.

3 Q. The 1982 offense, which is --

4 MR. JAMES: For the record, at Exhibit -- the
09:53 5 judgment, commitment order is Exhibit No. 19, Your Honor.

6 THE COURT: Thank you.

7 BY MR. JAMES:

8 Q. That's the 1982 offense. The 1988 offense is Exhibit No.

9 14, that's the assault, sex abuse and the 2003 offense is

09:53 10 Exhibit No. 9 and No. 11. No. 9 being the revocation judgment,

11 No. 11 being the amended judgment on Mr. Charboneau's

12 conviction of sexual contact with a person incapable of

13 consenting.

14 So with regard to the 1982 offense, tell the Court why you
09:54 15 found that qualified.

16 A. That was an offense in which he was originally charged

17 with rape and assault and he pled guilty to the assault and was

18 sentenced to 18 months in federal prison. He had been

19 drinking, out partying earlier that evening, as had been the

09:54 20 victim. The victim then returned to a home, she was house

21 sitting for a friend, and went to bed -- she left the party

22 around 1:00 in the morning and Mr. Charboneau followed her home

23 and let himself into her apartment and sexually assaulted her

24 while she was sleeping and they struggled. She indicated that

09:54 25 he did, in fact, rape her. However, he, as I said, he pled to

C. North - Direct Examination

09:55 1 assault and was -- served his first federal prison term for
2 that crime.

3 Q. All right. And when he was serving his first federal
4 conviction for that crime, he was considered a model prisoner,
09:55 5 don't all the records indicate that?

6 A. Yes.

7 Q. And he went to some sort of a detox at one point?

8 A. Correct.

9 Q. And then he was eventually released; is that correct?

09:55 10 A. Yes.

11 Q. Then he was re-admitted because of alcohol abuse; is that
12 also correct?

13 A. Yes.

14 Q. And the 1988 offense, you found that also as a qualifying
09:55 15 offense; isn't that correct?

16 A. Yes.

17 Q. Why did you find that was a qualifying offense?

18 A. In this offense he sexually assaulted his 10-year-old
19 daughter. He had been drinking heavily all day long prior to
09:56 20 the sexual assault at a family gathering. And as the day wore
21 on, most other family members left the site of the gathering
22 and he was alone with his daughter and a five-year-old nephew.
23 And at some point his sister left to take the last few people
24 home and he then grabbed his daughter and sexually assaulted
09:56 25 her. And a physical examination of the girl afterwards found

C. North - Direct Examination

09:56 1 that she had multiple bruises, contusions, abrasions and semen
2 was also found -- I don't recall whether it was found inside
3 her vagina or outside the vagina; but nonetheless, the semen
4 was found on or in her body.

09:56 5 Mr. Charboneau's sister then returned to the area in which
6 this party had been occurring about 12 or 13 minutes later and
7 the 10-year-old girl ran to her aunt and told her that her
8 father had just raped her and the girl was distraught,
9 disheveled, dirty, crying. Mr. Charboneau's sister observed
09:57 10 her brother, Mr. Charboneau, buttoning up his pants and walking
11 towards the car and she then took the victim to a police
12 station and reported the crime.

13 Q. Now, in your report beginning at page 5, which is Bates
14 1617, which is your report in Exhibit No. 3, Your Honor. The
09:57 15 last paragraph says that on August 1, 1988, Bureau of Indian
16 Affairs officers interviewed Mr. Charboneau, but he declined to
17 speak with them. He did speak about that offense at a later
18 time with the Federal Probation Officer. Do you see that?

19 A. I'm sorry. What page are you on again?

09:58 20 Q. It's page 5 of your report. On the bottom right-hand
21 corner, it says Bates 1617.

22 A. Okay.

23 Q. And if you go on to the next page, Mr. Charboneau told
24 that Federal Probation Officer that he had been drinking during
09:58 25 the day; is that correct?

C. North - Direct Examination

09:58 1 A. Yes.

2 Q. But he denied he was extremely drunk?

3 A. Correct.

4 Q. Now, don't the records indicate that the family members
09:58 5 had tried to hide alcohol from him?

6 A. Yes, that's true.

7 Q. Because of his complicated state?

8 A. Yes.

9 Q. All right. Now, did he state that, if you look at -- the
09:58 10 third sentence begins, He admitted pulling her clothes down,
11 but said while doing this he had a numb feeling and a feeling
12 of vibration going through his body.

13 A. Yes.

14 Q. All right. Does he further state that doing this, during
09:59 15 his rape of his daughter that he was frightened and nervous
16 that he had lost control. That's the third to last sentence I
17 believe in that.

18 A. Yes.

19 Q. So he indicated that there was a loss of control at the
09:59 20 time when he committed that offense; is that correct?

21 A. Correct.

22 Q. Now, with regard to the 2003 offense, look at page 8 of
23 your report, which would be Bates 1620. Did he, again, admit
24 that he had lost control?

10:00 25 A. Yes.

C. North - Direct Examination

10:00 1 Q. So you have the offense from 1988 and you have decades
2 later a second alcohol-based offense; is that correct?

3 A. Yes.

4 Q. In that second alcohol-based offense he indicates he lost
10:00 5 control?

6 A. Correct.

7 Q. Now, the records also indicate there was a 1987 offense.
8 And if you go to page 20 of your report, which is Bates number
9 1632, last paragraph, he doesn't deny that he committed that
10:01 10 offense to you, he just states he can't remember it; is that
11 correct?

12 A. Correct.

13 Q. And in that offense, that was also -- he was also
14 intoxicated at the time?

10:01 15 A. Yes.

16 Q. And in that offense, he had apparently broken into the
17 home of the victim?

18 A. Correct.

19 Q. And he was only stopped when the victim's husband came
10:01 20 home and I guess kind of found him and threw him out?

21 A. Correct.

22 Q. Now, with regard to the second prong of the Adam Walsh Act
23 where he suffers from a serious mental illness, abnormality or
24 disorder, you diagnosed Mr. Charboneau with alcohol use
10:01 25 disorder, severe in a controlled environment?

C. North - Direct Examination

10:01 1 A. Yes.

2 Q. Tell the Court why you believe that that diagnosis is
3 appropriate in Mr. Charboneau's case and why in Mr.
4 Charboneau's case that, in your opinion, qualifies as a serious
10:02 5 mental illness, abnormality or disorder under the Adam Walsh
6 Act.

7 A. I think it qualifies as a severe mental disorder because
8 of the impact it has had both on his life and the lives of the
9 victims.

10:02 10 His life is essentially in a shambles as a result of his
11 chronic drinking problem. He started getting arrested as a
12 teenager for problems related to his drinking. He was
13 hospitalized in North Dakota over 10 times in a state hospital
14 by the age of 25 for problems related to his drinking.

10:02 15 He has approximately 20 arrests and convictions for other
16 more minor kinds of offenses related to his drinking. This is
17 all in addition to the four sex crimes that he committed as a
18 result of his drinking.

19 So even after serving two different prison terms and
10:03 20 getting out and trying to remain sober between 2000 and 2003,
21 he had great difficulty doing that. And on the day of the last
22 offense in 2003, he had gone to see his probation officer and
23 gave a urine sample earlier that day to comply with the
24 condition that he refrain from drinking alcohol. And within
10:03 25 hours of providing the urine sample, he was drinking with his

C. North - Direct Examination

10:03 1 last victim whiskey, and of course, became intoxicated and then
2 later that night sexually assaulted her.

3 So he has spent most of his life or much of his life in
4 custody and he's been unable to function in any kind of
10:03 5 independent fashion in the community and he's created
6 significant problems for his victims as a result of his
7 drinking.

8 And as such, I think his alcohol use disorder is a serious
9 or severe mental disorder as described in the Adam Walsh Act.

10:04 10 Q. In fact, in 2014, did Mr. Charboneau's family send a
11 letter to Probation stating that he shouldn't be released
12 because he's dangerous to the community?

13 A. They did.

14 Q. And so that broken ties with the family, would you say
10:04 15 that that is a result of his alcohol abuse disorder?

16 A. Certainly that's a large part of it, but because of what
17 his drinking has led to behaviorally, they don't want to have
18 anything more to do with him.

19 Q. You mentioned in 2003 Mr. Charboneau saw his probation
10:05 20 officer, was tested and later on that day assaulted the victim,
21 I guess would be in the instant offense; is that correct?

22 A. Uhm-uhm.

23 Q. Isn't it true that noncompliant supervision is one of the
24 more robust inherently supported risk factors for re-offense?

10:05 25 A. It is.

C. North - Direct Examination

10:05 1 Q. You've also diagnosed him with inhalant use disorder,
2 severe, in sustained remission. Tell the Court why you made
3 that diagnosis.

10:05 4 A. Apparently, he started abusing inhalants when he was about
10:05 5 12 years old and his mother described in her letter to the
6 Court how he essentially stopped performing in school, he
7 started having significant behavioral problems, he would be
8 watching television and start laughing at the television when
9 there was nothing funny on the TV at all, he was lost in his
10:06 10 own world and sort of became increasingly disengaged from the
11 family, from society, from school and she sought to have him
12 hospitalized at North Dakota State Hospital numerous times; and
13 he was, in fact, hospitalized on a number of occasions for his
14 inhalant abuse. And nonetheless, I think it certainly exacted
10:06 15 a toll on his neurocognitive functioning and that he still has
16 significant problems with expressive language that are residual
17 to his years of inhalant abuse.

18 So it looks like he stopped abusing inhalants probably in
19 his early twenties, although it's not entirely clear; but
10:06 20 nonetheless, the damage was done by that point in time.

21 So he certainly historically has a history of severe
22 inhalant use disorder.

23 Q. Now, you also diagnose him with inhalant-induced mild
24 neurocognitive disorder.

10:07 25 A. Correct.

C. North - Direct Examination

10:07 1 Q. Tell the Court, what's the basis for that?

2 A. The basis for that is really his expressive language
3 problems. He can't seem to find the words to express his
4 thoughts, feelings and experience.

10:07 5 And I had a sense when I was interviewing him that he
6 understood my questions and that he knew what I was trying to
7 inquire about, but he was simply unable to collect the words to
8 express himself and answer my questions adequately. And this
9 has been a longstanding problem with him, and the problem is so
10:07 10 severe that it makes it very difficult for him to communicate
11 with anyone in a very meaningful way. And I think it leads to
12 a lot of social isolation on his part and it affects his
13 self-esteem as well.

14 But I would say that the neurocognitive disorder really is
10:08 15 primarily related to -- primarily due to these severe problems
16 with expressive language.

17 Q. And with regard to Prong 3, as a result of the disorder
18 that you have testified, do you believe that Mr. Charboneau
19 would have serious difficulty refraining from sexually violent
10:08 20 conduct or child molestation?

21 A. Yes, I do.

22 Q. And tell the Court why you view that.

23 A. Well, it seems that every time he's out, whenever he's out
24 he eventually reverts to drinking and when that happens, it's
10:08 25 only a matter of time that he sexually assaults a woman or a

C. North - Direct Examination

10:09 1 child.

2 I think we heard earlier about some of his problems
3 dealing with his own sexuality. And in my opinion, his
4 development stopped when he was about 12 or 13 years old and he
10:09 5 started abusing inhalants and I don't think he's grown up since
6 then. He's basically a 12 or 13-year-old functioning in an
7 adult's body and he's never developed a mature adult sexuality.
8 He doesn't know how to approach women. We do know he's
9 sexually attracted to women, but he really doesn't know what to
10:09 10 do with them. He does have sexual drive and sexual urges which
11 he has difficulty dealing with and accepting.

12 When he drinks alcohol, he develops this liquid courage to
13 act out his sexual urges, his sexual desire and unfortunately
14 it takes the form of sexual assault or rape, whether it's with
10:09 15 a female child or adult.

16 He's having problems that are longstanding. They are
17 likely to act out again if he gets out and starts drinking
18 again. He simply doesn't have the capacity to control his
19 behavior when he drinks alcohol and we know, unfortunately,
10:10 20 historically that this is likely to happen again.

21 He's not very committed to a life of sobriety. As we
22 heard his treatment provider say, he goes to AA meetings
23 because he's asked to go to AA meetings, not because he feels
24 he needs to go there. So he doesn't really have any awareness
10:10 25 of the fact that he needs to stay away from alcohol.

C. North - Direct Examination

10:10 1 He's very susceptible to peer influence. I think all it
2 would take is someone sitting down with him and offering him a
3 drink and he would start drinking. He is unable to say no. He
4 doesn't have the ability to think clearly about the situation
10:10 5 and what the right thing to do is. He's very impulsive.

6 And we know from experience that when he starts drinking,
7 eventually he's going to sexual assault a woman or a child if
8 the opportunity presents itself to him.

9 Q. All right. Now, within your clinical interview with him,
10:11 10 did you ask him if he believed he had a drinking problem?

11 A. I did.

12 Q. And what was his response?

13 A. "No."

14 Q. No --

10:11 15 A. No, he does not have a drinking problem.

16 Q. Did he say how he would stay away from alcohol if he was
17 released?

18 A. I don't remember that he said how he would stay away from
19 alcohol. He said he would be willing to attend AA meetings if
10:11 20 that were required of him.

21 Q. Based on what you heard about his current treatment
22 progress, he goes because he's told to go?

23 THE COURT: What was your question?

24 BY MR. JAMES:

10:11 25 Q. Based on -- based upon what you've heard about

C. North - Direct Examination

10:11 1 Mr. Charboneau's treatment progress with regard to alcohol
2 problems, he goes to the NA meeting or AA meetings because he's
3 been told to go or recommended to go by the treatment staff,
4 not because he's committed?

10:12 5 MS. SHEA: Judge, I'm going to object. I think
6 that's a mischaracterization of Dr. Holden's testimony. I
7 think all she said was that he was very compliant, but I don't
8 think that she ever said that he was told he had to go to AA.

9 MR. JAMES: I'll rephrase the question.

10:12 10 BY MR. JAMES:

11 Q. Is it your opinion that when Mr. Charboneau goes to the AA
12 meeting, based on what you've heard, the testimony that you've
13 heard today and based upon your interview with him regarding
14 his alcohol problem or whether he considers he has a problem,
10:12 15 that Mr. Charboneau would attend that meeting because that's
16 what was recommended, not because he's internally committed to
17 addressing an alcohol problem?

18 A. Yes, that's true.

19 Q. And in your interview with Mr. Charboneau, he's told you
10:13 20 that he would go to an AA meeting if he was required?

21 A. Yes.

22 Q. Now, in your report, when you get to the third prong, I
23 believe in your report you've indicated that Mr. Charboneau
24 believed that he could stay away from alcohol without a program
10:13 25 or without support in the community.

C. North - Direct Examination

10:13 1 A. Yes.

2 Q. Now, you've been in the field of clinical psychology for
3 over 30 years; isn't that correct?

4 A. Yes.

10:14 5 Q. And I believe you write in your report that in your over
6 30 years as a licensed psychologist, you can't recall someone
7 with this level of denial; is that correct?

8 A. That is true.

9 Q. Now, you also -- although you did not perform an actuarial
10:14 10 scoring in this case, I believe you stated that in your report
11 you concur with Dr. Ross' Static-99 with the exception of item
12 number two, whether he's had a significant partner or lover,
13 lived with someone for over two years?

14 A. Correct.

10:14 15 Q. And what caused you to disagree with Dr. Ross on that
16 score?

17 A. Well, actually, I did score him on the Static-99R, he has
18 a 5 on the Static-99R.

19 Q. And what does the 5 reflect for individuals, like
10:15 20 individuals?

21 A. It falls within the above average risk category.

22 Q. You also used an instrument to address -- to guide your
23 opinion with regard to some dynamic factors; is that correct?

24 A. Yes.

10:15 25 Q. What was that?

C. North - Direct Examination

10:15 1 A. The Structured Risk Assessment, Forensic Version.

2 Q. All right. And what dynamic factors or variables did you
3 find in this case?

4 A. Well, the most significant one is that I felt he really
10:15 5 eclipses everything else in the risk assessment is poor
6 problem-solving skills.

7 Again, to have no awareness of his problem with alcohol
8 given his history is incredible. Given all the problems that
9 it's created for him and other people in his life, for him to
10:16 10 think that he doesn't have a problem is just astounding.

11 And -- and he'll go to AA or treatment if it's recommended to
12 him, but the fact that he is unaware that this is a problem
13 that he needs to do something about, to me just sort of
14 eclipses everything else in the Risk Assessment.

10:16 15 Q. Did you also look at protective factors?

16 A. Pardon?

17 Q. Did you also look at protective factors?

18 A. Yes, I did.

19 Q. And those protective factors being whether he's been in
10:16 20 the community for 10 years without committing a sexual offense,
21 less than 15 years left to live due to illness or physical
22 impairment, and very advanced stage.

23 Did you find any of those factors as being relevant with
24 regard to Mr. Charboneau?

10:17 25 A. No.

C. North - Direct Examination

10:17 1 Q. Now, you were present today for Dr. Holden's testimony
2 with regard to Mr. Charboneau's treatment. Can you tell the
3 Court about -- if you have any impressions regarding
4 Charboneau's treatment progression so far?

10:17 5 A. Well, as she indicated, he's in a fairly early stage of
6 treatment. I think it's good that he's going and that he's
7 gotten involved in treatment with her. I think he still has a
8 long ways to go. I didn't hear anything that would convince me
9 that he is no longer sexually dangerous.

10:17 10 Q. And when someone -- when a person in treatment like
11 Mr. Charboneau indicates to a treatment provider that they
12 believe they are sexually dangerous, that's something that you
13 have to take into account; isn't that correct?

14 A. Yes.

10:18 15 Q. And why is that important when someone makes that kind of
16 admission, that they are, in fact, sexually dangerous?

17 MS. SHEA: Object, again. I'm going to object to the
18 question. I think that he mischaracterized her testimony. I
19 understand that that's what she wrote in the treatment note,
10:18 20 but her testimony was that she said Mr. Charboneau told her he
21 should go to treatment before he's released. That was her
22 testimony.

23 THE COURT: Rephrase the question.

24 MR. JAMES: Sure. Your Honor, I'll be happy to
10:19 25 rephrase the question and the record, of course, stands and

C. North - Direct Examination

10:19 1 this Court will review it. But I don't believe I
2 mischaracterized --

3 THE COURT: I don't think you did either, but you're
4 asking him about -- he heard the treatment provider's testimony
10:19 5 and whether that changed his opinion and he said no, and he can
6 explain why.

7 BY MR. JAMES:

8 Q. Can you please explain to the Court why that did not
9 change your opinion with regard to Mr. Charboneau's sexual
10:19 10 dangerousness?

11 A. Why it did not change my opinion?

12 Q. Right. In other words, you believe he's still sexually
13 dangerous.

14 A. Well, I just feel it's additional corroboration,
10:19 15 confirmation, supportive evidence for my opinion. I'm glad
16 that he has sort of reached that level of insight where he is
17 also aware that he has a sexual problem and that he needs help.

18 Q. Do you agree that it would be -- it would negatively
19 impact Mr. Charboneau's treatment if he were to be removed from
10:20 20 or quit the CTP that he's currently in right now?

21 MS. SHEA: Judge, I don't think that this witness is
22 qualified as an expert in sex offender treatment. I don't know
23 what his background is in treatment, so I don't know if he's
24 qualified to comment on that.

10:20 25 THE COURT: Just lay a foundation.

C. North - Direct Examination

10:20 1 BY MR. JAMES:

2 Q. Dr. North, have you been involved in sex offender
3 treatment as well?

4 A. Yes.

10:20 5 Q. All right. And in your practice in, I believe California
6 and Washington State?

7 A. Yes.

8 Q. All right. And have you been involved in the treatment of
9 sex offenders for a number of years?

10:20 10 A. Yes. I worked at Atascadero State Hospital, which is a
11 forensic mental health hospital in California, from 1985 to
12 1993, and I worked with a number of sex offenders, mentally
13 disordered sex offenders as well as sex offenders who were
14 transferred from the Department of Corrections for treatment in
10:21 15 the hospital.

16 Q. All right. Have you opined as an expert in regards to sex
17 offender treatment as well?

18 A. Yes.

19 MR. JAMES: Your Honor, at this time I ask that you
10:21 20 allow me to ask the witness --

21 THE COURT: You can ask the question.

22 MR. JAMES: Thank you.

23 BY MR. JAMES:

24 Q. Do you believe that if Mr. Charboneau was removed from
10:21 25 treatment at this current time that it would negatively impact

C. North - Cross-Examination

10:21 1 his ability to progress?

2 A. I do.

3 MR. JAMES: One moment, Your Honor.

4 THE COURT: Okay.

10:21 5 MR. JAMES: No further questions, Your Honor.

6 THE COURT: Cross-examination?

7 MS. SHEA: Thank you.

8 CROSS-EXAMINATION

9 BY MS. SHEA:

10:21 10 Q. Good morning, Dr. North.

11 A. Good morning.

12 Q. You'd agree that Mr. Charboneau does not suffer from a
13 paraphilia, correct?

14 A. Yes.

10:22 15 Q. You'd agree that he does not suffer from a personality
16 disorder, correct?

17 A. Yes.

18 Q. You'd agree that he's been incarcerated since 2003
19 continuously, correct?

10:22 20 A. Correct.

21 Q. And in all of the records that you reviewed, there was not
22 a shred of evidence that he has had a sip of alcohol in 13
23 years, correct?

24 A. Correct.

10:22 25 Q. You'd agree that he has had excellent prison conduct,

C. North - Cross-Examination

10:22 1 correct?

2 A. Correct.

3 Q. That he's only gotten one infraction, which was a minor
4 one, correct?

10:22 5 A. Yes.

6 Q. Not showing up where he was supposed to show up, something
7 like that?

8 A. Right.

9 Q. You're aware that he has 24 months of supervised release
10:22 10 following his release from Butner, correct?

11 A. Yes.

12 Q. You'd agree that his criminal history involves many other
13 types of criminal violations that he did under the influence of
14 alcohol other than sex offenses, correct?

10:23 15 A. Well, the other violations were pretty minor. They were
16 things like disorderly conduct, minor assaults, driving -- I
17 don't think he's ever had a license. But basically, disorderly
18 conduct-type offenses related to drinking.

19 Q. Public intoxication type things, correct?

10:23 20 A. Yes.

21 Q. On your report, on page 14 of your report, you noted that
22 his thinking and functioning generally improve when he's been
23 clean and sober for extended periods of time; do you remember
24 that you wrote that?

10:23 25 A. Yes.

C. North - Cross-Examination

10:23 1 Q. And you testified today that he has trouble expressing
2 himself, correct?

3 A. Yes.

4 Q. But then in your opinion, he was actually trying to
10:23 5 respond relevantly to your questions and having trouble finding
6 the words, correct?

7 A. Yes.

8 Q. On page 17 of your report -- and this is the last
9 paragraph of that page -- that he came across as a gentle
10:24 10 individual who is perhaps somewhat shy and uncomfortable around
11 other people and that he did not present as angry, resentful or
12 antisocial, and then following on to page 18 you wrote that his
13 immediate and short-term memory were surprisingly good and his
14 cognitive problems appeared to be limited to self-expression.

10:24 15 Correct?

16 A. Yes.

17 Q. On page 26 of your report -- and this is the last couple
18 of sentences on the first full paragraph -- you wrote that
19 there is no indication that he has ever been sexually
10:25 20 aggressive while not under the influence of alcohol. It is
21 clearly the alcohol that disinhibits him as opposed to any
22 paraphiliac interest in forcing sex or humiliating his
23 partners, correct?

24 A. Correct.

10:25 25 Q. And in all of the records that you reviewed, it did not

C. North - Redirect Examination

10:25 1 come across that Mr. Charboneau planned any of his sex
2 offenses, rather that they were acts of opportunity when he was
3 already drunk, correct?

4 A. For the most part, that's true. However, the 1982
10:26 5 offense, remember, he went to the woman's apartment where she
6 was house sitting, entered and then went to her room and
7 sexually assaulted her. So I would say that there probably was
8 some premeditation for that offense.

9 Q. But there was no evidence that he planned it, for example,
10:26 10 days in advance or anything like that, correct?

11 A. Pardon?

12 Q. There was no evidence that he planned it days in advance
13 or anything like that, correct?

14 A. Well, we don't know. No, just that he went there and
10:26 15 assaulted her, yes.

16 Q. Right.

17 MS. SHEA: Thank you, Your Honor. No other
18 questions.

19 MR. JAMES: I have a few, Judge.

10:26 20 REDIRECT EXAMINATION

21 BY MR. JAMES:

22 Q. Dr. North, Ms. Shea had, during cross-examination, pointed
23 out that Mr. Charboneau has had I believe excellent conduct --
24 I believe that was the term that was used -- while in prison
10:27 25 except for one infraction. Is that correct?

C. North - Redirect Examination

10:27 1 A. Yes.

2 Q. Is it also true that the review of his institutional
3 history, that Mr. Charboneau generally does not act out at all
4 while in a structured environment?

10:27 5 A. Correct.

6 Q. In fact, in -- he was in a structured environment in
7 '82 when they considered him a model prisoner; is that correct?

8 A. That's correct.

9 Q. And he's committed offenses obviously after 1982 once he
10:27 10 got out in the community; is that correct?

11 A. Yes.

12 Q. He was incarcerated in 1988 to 2000 where there is no
13 evidence he was anything other than a model prisoner; isn't
14 that correct?

10:27 15 A. Yes.

16 Q. And once he was out unstructured he committed sexual
17 offenses while intoxicated?

18 A. Correct.

19 Q. And with regard to the 2003 conviction, he was on
10:28 20 supervision --

21 A. That's right.

22 Q. -- is that correct?

23 A. That's right.

24 MR. JAMES: No further questions, Your Honor.

10:28 25 THE COURT: Okay.

H. Ross - Direct Examination

10:28 1 MS. SHEA: Nothing further.

2 THE COURT: Thank you, Doctor. Watch your step
3 stepping down, sir.

4 MR. JAMES: Your Honor, is it possible that we could
10:28 5 take a comfort break?

6 THE COURT: Sure, we can. Ten-minute recess.

7 (The proceedings were recessed at 10:28 a.m. and reconvened
8 at 10:40 a.m.)

9 THE COURT: The United States may call its next
10:40 10 witness.

11 MR. ANDERSON: Your Honor, the United States calls
12 Dr. Heather Ross to the stand.

13
14 HEATHER ROSS, Ph.D

10:40 15 having been duly sworn, testified as follows:

16 THE COURT: Good morning, Dr. Ross.

17 THE WITNESS: Good morning.

18 THE COURT: You may examine the witness.

19 MR. ANDERSON: Thank you.

10:40 20 DIRECT EXAMINATION

21 BY MR. ANDERSON:

22 Q. Good morning, Dr. Ross.

23 A. Good morning.

24 Q. Can you give your full name and position for the record.

10:40 25 A. Heather Ross, and I'm a sex offender forensic psychologist

H. Ross - Direct Examination

10:41 1 at the Bureau of Prisons.

2 Q. Again, just for the record, your CV is located at
3 Government's Exhibit No. 4?

4 A. Yes.

10:41 5 Q. Did you evaluate Mr. Charboneau pursuant to the Adam Walsh
6 Act?

7 A. I did.

8 Q. Can you explain to me how you evaluated him in this case?

9 A. Just as in most cases, I conducted a records review, which
10:41 10 involved reviewing police reports, court documents, Bureau of
11 Prisons records, both psychological as well as medical, also
12 looked at his behavior in the Bureau of Prisons and offered him
13 the opportunity to interview with me.

14 Q. Did he interview with you?

10:41 15 A. He did not.

16 Q. Did you write a report of your findings?

17 A. I did.

18 Q. And is that report in Government's Exhibit No. 5?

19 A. Yes.

10:41 20 Q. Did you also review the reports of Dr. North, Dr. Zinik
21 and Dr. Plaud in this case?

22 A. I did.

23 Q. Have you reviewed any other records since you wrote your
24 report?

10:42 25 A. I reviewed Mr. Charboneau's deposition as well as any

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10:42 1 other records sent to me by the AUSA's office.

2 Q. Did you review some records that had been prepared by Dr.
3 Holden?

4 A. Yes, I reviewed those as well.

10:42 5 Q. In this case, have you formed an opinion to a reasonable
6 degree of professional certainty as to whether Mr. Charboneau
7 is a sexually dangerous person under the Adam Walsh Act?

8 A. I have.

9 Q. What's that opinion?

10:42 10 A. My opinion is that he's a sexually dangerous person.

11 Q. Let's break that down into the three prongs of sexual
12 dangerousness.

13 On Prong 1, did you find that Mr. Charboneau previously
14 committed or attempted to commit acts of sexually violent
10:42 15 conduct and child molestation?

16 A. Yes.

17 Q. Just for the record, the basis for your assessment on
18 Prong 1, is that located in Government's Exhibit No. 5, the
19 pages that are Bates labeled 535539?

10:43 20 A. Yes, that's the sexual criminal history section of my
21 report.

22 Q. Did you hear Dr. North testify about his analysis on Prong
23 1 and the details of all four of those cases?

24 A. Yes.

10:43 25 Q. Do you have anything to add here?

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10:43 1 A. No, I think he covered it well.

2 Q. Let's move on to Prong 2, then. Have you concluded that
3 in Prong 2 that Mr. Charboneau suffers from serious mental
4 illness, abnormality and disorders?

10:43 5 A. I did.

6 Q. Again, just for the record, the basis for your analysis is
7 at pages 540 to 541 in Government's Exhibit No. 5?

8 A. That's correct. Under diagnostic impressions.

9 Q. What specific diagnoses did you give?

10:43 10 A. I gave several. I gave alcohol use disorder in a
11 controlled environment, inhalant use disorder in sustained
12 remission, adult sexual abuse by non-spouse or perpetrator and
13 child sexual abuse perpetrator.

14 Q. I'm going to go in reverse order with those. Let's start
10:44 15 with the last two just to knock them out.

16 Why did you put those in your report here?

17 A. Because there's no paraphilic diagnosis, that just is
18 provided to indicate to the reader, specifically any treatment
19 providers that might follow up afterwards, of the victims of
10:44 20 his abuse, what type of abuse he engaged in, whether it was
21 against adults or against children.

22 Q. Did those diagnoses factor in your analysis on Prong 3?

23 A. No.

24 Q. Let's talk about the first two diagnoses then; alcohol use
10:44 25 disorder and inhalant use disorder. Again, you heard Dr. North

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10:44 1 testify about his analyses for those diagnoses?

2 A. I did.

3 Q. Can you -- first of all, do you have anything to add as to
4 why he diagnosed those two disorders?

10:44 5 A. No, I don't think so. I think it's readily apparent to I
6 believe all the evaluators in this case that Mr. Charboneau has
7 had severe difficulties with inhalants in the past and alcohol
8 up until his current incarceration.

9 Q. Why, in your opinion, is Mr. Charboneau's alcohol use
10:45 10 disorder a serious mental illness abnormality or disorder in
11 this case?

12 A. I think Dr. North explained that very well, just the
13 impact it has had on his life as well as the lives of the
14 victims that have been involved, and his family members as
10:45 15 well.

16 So his alcohol use disorder has been pervasive, it's been
17 since he was an adolescent and it has affected every aspect of
18 his life, whether it's employment, housing, the criminal
19 justice system. It's been a severe disorder for him.

10:45 20 Q. You heard Dr. North testify that Mr. Charboneau's family
21 has disowned him at least in part because of the consequences
22 of his drinking, right?

23 A. Correct.

24 Q. Take a look, if you would please, at Government's Exhibit
10:46 25 No. 8.

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10:46 1 A. I'm there.

2 Q. Have you seen this document before?

3 A. I have.

4 Q. Can you explain to us what this document is?

10:46 5 A. This was a letter written by the Charboneau family, or
6 several members of the family, to U.S. Probation and Parole in
7 July of 2014.

8 Q. And what does this document say? Just summarize it,
9 please.

10:46 10 A. As the first sentence says, "This letter is an attempt to
11 prohibit Blake Charboneau from being released into society."
12 And then they went into their concerns about him because of his
13 alcohol use and then the resulting sexual assaults he's engaged
14 in, specifically on family members as well as other members in
10:46 15 the community.

16 Q. In addition to his family disowning him, has his tribe
17 also disowned him?

18 A. Yes, I believe he's been banned or excommunicated or
19 something from the reservation. And I think at that same time
10:47 20 his family had also expressed grave concerns of him coming back
21 at that time as well.

22 Q. Let's move then to Prong 3, please. Did you find that as
23 a result of Mr. Charboneau's serious mental abnormalities that
24 he would have serious difficulty refraining from serious
10:47 25 violent conduct and child molestation if released?

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10:47 1 A. I did.

2 Q. Again, just for the record, your analysis on Prong 3 is at
3 pages 541, 545 of Government Exhibit No. 5?

4 A. That's correct.

10:47 5 Q. Can you please summarize the basis? We'll get into the
6 details in a minute.

7 A. The basis for my finding on Prong 3 is based on his
8 moderate, high risk on the Static-99R as well as several
9 dynamic risk factors, all of which encourage the -- I won't say
10:48 10 encourage, but they facilitate the use of the alcohol and they
11 are exacerbated by his use of alcohol. So all of those, I
12 think, give him serious difficulty from refraining from further
13 acts of sexual violence and child molestation.

14 Q. Let's start with the actuarial score that you mentioned.

10:48 15 Which actuarial instrument did you use?

16 A. The Static-99R.

17 Q. And what score did you give him?

18 A. I gave him a 4.

19 Q. You heard Dr. North explain that he gave Mr. Charboneau a
10:48 20 5.

21 A. Yes.

22 Q. Why did you give Mr. Charboneau a 4?

23 A. Unlike the other evaluators in this case, I did not have
24 the benefit of interviewing Mr. Charboneau, so I couldn't ask
10:48 25 more detailed information about his history and specific to the

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10:48 1 item two that Dr. North mentioned was his relationship history.

2 So because he had some type of, it appeared long-term
3 relationship that resulted in two children, I gave him the
4 benefit of the doubt and gave a more conservative score of a
10:49 5 zero on number two instead of a one, but now that Dr. North
6 gave that information, I think that was consistent through the
7 other evaluators as well, I would change my score to a 5 as
8 well to reflect that new information.

9 Q. What risk category of Static score of 4 or 5 for that
10:49 10 matter into?

11 A. The Static-99 scores categories have changed a bit, but
12 when I scored it, it was moderate high. I believe Dr. North
13 used a different term that's the new term now, but at the time
14 of the score it was moderate high, still above average.

10:49 15 Q. Do you think that adequately represents Mr. Charboneau's
16 risk of re-offense?

17 A. No, not in this case.

18 Q. Why not?

19 A. In this case -- so every case you have to consider
10:49 20 individually and the specific risk factors in that case and
21 because Mr. Charboneau's severe, severe alcohol use and the
22 violent sexual assaults that have resulted from his using the
23 alcohol, I just don't think it's captured very well on the
24 Static-99R.

10:50 25 Q. So in your opinion, his risk of re-offending is higher

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10:50 1 than what the Static-99R would state?

2 A. I believe it is, yes.

3 Q. Let's talk about the dynamic risk factors, since you
4 mentioned those.

10:50 5 First, briefly list which ones you think are the most
6 important in Mr. Charboneau's case.

7 A. Sure. I believe his lack of emotionally intimate
8 relationships with adults, his lifestyle impulsivity, his poor
9 problem solving, and his resistance to rules and supervision at
10:50 10 least in the community are all concerning.

11 Q. Let's take those one by one. We'll start with lack of
12 emotionally intimate relationships with adults. Can you
13 explain what evidence supports that dynamic factor?

14 A. Sure. As we discussed, he's never had a long-term
10:50 15 relationship with an adult that was emotionally intimate. He
16 had a relationship that resulted in two children; but as we
17 found out more recently, that was on again and off again. I
18 think he testified to that in his deposition. So it wasn't a
19 particularly strong bond. And as Dr. North discussed, he's got
10:51 20 social difficulties where it's hard for him to form bonds and
21 understand the process of finding a partner. So that's a risk
22 factor.

23 Q. What about lifestyle impulsivity, what supports that in
24 this case?

10:51 25 A. I think most of his history supports that. His life has

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10:51 1 been unstable both with employment, with housing, again, the
2 criminal justice system, and, of course, overarching all of
3 that is the alcohol misuse. So all of that is very suggestive
4 of impulsivity throughout his lifestyle.

10:51 5 Q. Can you talk about now of poor problem solving, what
6 evidence supports that?

7 A. Sure. So in my report I said there wasn't much
8 information in the record about his problem-solving abilities
9 other than, again, when he's misusing alcohol and obviously
10:52 10 that -- he demonstrates significant problem-solving
11 difficulties at that time. But then as Dr. Holden testified
12 to, and as I had reviewed in the treatment records, they also
13 identified problem solving as a concern and she discussed how
14 his problem-solving style is one of passivity where he waits
10:52 15 for the problem to resolve itself rather than taking an active
16 role in solving those problems himself.

17 Q. And then finally, resistance to rules and supervision.
18 Can you briefly summarize your analysis of that dynamic risk
19 factor?

10:52 20 A. Sure. As I said, and has been testified to previously
21 today, Mr. Charboneau does very well in the institution. He
22 follows the rules and regulations of institutions or in any
23 kind of secure or structured environment quite well.

24 But in the community, that's where he has significant
10:53 25 difficulty following those rules, whether it be drinking

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10:53 1 alcohol or engaging in other offenses. And as was noted in his
2 most recent period of supervision, he did quite well when he
3 was in that structured residential placement, such that they
4 moved him down to him being in his own apartment, but then once
10:53 5 he had that freedom again, that was when he went and did the
6 urine test and then later that same day bought alcohol and then
7 engaged in another rape.

8 Q. Let's talk in a little bit more detail about that last
9 time period that he was in the community and put some dates on
10:53 10 it.

11 A. Okay.

12 Q. You mentioned that he was put into a residential program.
13 Do you recall exactly when he was placed in that residential
14 program?

10:53 15 A. According to my report, I have that he was placed at
16 Behavioral Management Systems or BMS, which was a residential
17 program, on November 15th, 2001.

18 Q. And that, like you said, was a residential program?

19 A. Yes.

10:54 20 Q. Did he have a job during that time period?

21 A. I believe he did. I believe he was a dishwasher.

22 THE COURT: Doctor, is that a federal halfway house,
23 is that what that is?

24 THE WITNESS: It may be. I'm unfamiliar.

10:54 25 BY MR. ANDERSON:

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10:54 1 Q. After Mr. Charboneau was placed in the residential program
2 in November, 2001, when was the next time that he had a drink?

3 A. Let me see if I can identify it. He was placed in a detox
4 program at some point after that, so I'm guessing he -- let's
10:54 5 see. What I have in my report is that he tested positive while
6 on supervision for marijuana on January 25th, 2002, and
7 admitted drinking alcohol on New Year's Eve, I guess of 2001,
8 December, 2001.

9 Q. And that would have been about a month, month and a half
10:55 10 after he was placed in that residential program?

11 A. Yes.

12 Q. When did Mr. Charboneau get out of that residential
13 program? By "get out," I mean move from the residential
14 program to the more independent apartment adjacent to it.

10:55 15 A. He did a detox program after the alcohol use for about 12
16 days and then returned back to BMS, so that was probably
17 sometime in about February of 2002. And then because of his
18 good progress, he was eventually moved to an apartment right
19 next door to BMS on March 21st, 2003.

10:55 20 Q. When was the next time Mr. Charboneau had a drink after he
21 was moved to that independent apartment?

22 A. I can't say for sure, but we definitely know that he had a
23 drink and continued to drink on the date of the offense, which
24 was I believe in July of that same year. Let me check the
10:55 25 exact date. I can't find the date. I know 2003.

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10:56 1 Q. We'll get to that in just a second.

2 So he was released to -- he was released, you said, in
3 March of 2003 from the residential program to the independent
4 apartment.

10:56 5 Let me direct your attention to the page of your report
6 marked 532, and your report, again, is Government's Exhibit No.
7 5.

8 THE COURT: 542?

9 MR. ANDERSON: 532, Your Honor.

10:56 10 THE COURT: 532.

11 THE WITNESS: Yes, I'm there.

12 BY MR. ANDERSON:

13 Q. Top paragraph, second to last line beginning, "On
14 April 22nd, 2003," can you just take a look at that to yourself
10:56 15 and let me know when you're done.

16 A. I'm done.

17 Q. Does that refresh your recollection as to approximately
18 the next time after he was released in March, 2003 that he had
19 a drink?

10:57 20 A. Yes. So I was incorrect. So in between the March and
21 July there was also the April 22nd, 2003, when he reported that
22 he had consumed alcohol.

23 Q. And then from April, 2003 -- well, first let's nail down
24 the date on this last offense.

10:57 25 MR. ANDERSON: Your Honor, may I have just one

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10:57 1 moment, please?

2 THE COURT: You may.

3 (Pause in the proceeding.)

4 BY MR. ANDERSON:

10:58 5 Q. Dr. Ross, can you flip, please, to Government's Exhibit
6 No. 10.

7 A. Yes, I'm there.

8 Q. Turn to the page marked -- Bates labeled 10.

9 A. Yes.

10:58 10 Q. Paragraph number eight, first line.

11 A. Yes.

12 Q. Just read that to yourself, please.

13 A. Uhm-uhm.

14 Q. Does that fresh your recollection as to when

10:58 15 Mr. Charboneau committed his next offense?

16 A. Yes. He was arrested on July 12th, 2003.

17 Q. So just for the record, Government's Exhibit No. 12, is
18 that the complaint, the criminal complaint for that offense?

19 A. Yes, it is.

10:59 20 Q. So Mr. Charboneau is released from that residential
21 program in March of 2003, he reported that he had a drink in
22 April 2003, and then he committed his offense, as we saw, in
23 July 2003.

24 A. Correct.

10:59 25 Q. Can you describe his living arrangement after he reported

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10:59 1 his drinking in April of 2003?

2 A. Sure. So I believe he was originally placed in an
3 apartment by himself and then as -- after he reported that
4 incident with alcohol in 2000 -- in April 2003, they eventually
10:59 5 moved another individual -- I don't know if it was into his
6 apartment or him into the other individual's apartment, but
7 they gave him a roommate on July 1st, 2003.

8 Q. Why was he given a roommate?

9 A. They felt the roommate would be a positive influence on
10:59 10 him.

11 Q. Was Mr. Charboneau on federal supervision at the time of
12 that offense?

13 A. Yes, he was.

14 Q. The same federal supervision that he will be released to
11:00 15 when he is released?

16 A. That's correct.

17 Q. Let's go back to the dynamic factors that we were talking
18 about.

19 Now that we've gone through each of the four that you
11:00 20 identified as the most important, which were poor problem
21 solving, lifestyle impulsivity, resistant to rules and
22 supervision, and lack of emotional relationships with adults,
23 can you, please, explain the interplay of those four dynamic
24 factors and how they impact your analysis to Prong 3?

11:00 25 A. Sure. Dynamic risk factors, it's not necessarily

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11:00 1 additive, it's not one point for each dynamic risk factor.
2 Each one has to be considered individually and on a
3 case-specific basis on how that risk factor is involved in that
4 individual's case. And I think for Mr. Charboneau, he doesn't
11:00 5 hit all the dynamic risk factors that I look at in my reports,
6 but those that he does hit on, those work together and they're
7 exacerbated by his alcohol use to the point that I think it
8 causes him serious difficulty refraining from further acts of
9 sexual violence.

11:01 10 Q. Did you also analyze the factors in BOP's guidelines for
11 determining sexual dangerousness?

12 A. I did.

13 Q. Just for the record, your analysis is detailed in
14 Government's Exhibit No. 5 at pages marked 544, 545.

11:01 15 A. Yes.

16 Q. All right. At the time that you wrote your report -- and
17 I'm looking now at the very last paragraph, second line about
18 midway on that line -- it says, "His appreciation of his
19 criminal conduct is unknown, as this was not addressed in
11:01 20 records and the inmate did not interview during the current
21 evaluation." Do you see that?

22 A. Yes.

23 Q. Since you wrote your report, have you seen evidence that
24 Mr. Charboneau does not, in fact, appreciate the wrongfulness
11:01 25 of his actions?

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11:01 1 A. Yes. In the other evaluators' reports where they
2 interviewed him and he seemed to deny or minimize much of the
3 offenses. And then as Dr. Holden testified today, in treatment
4 he's also justified or minimized his offenses.

11:02 5 Q. Of the BOP factors that you considered, which are the most
6 important in Mr. Charboneau's case?

7 A. I believe that the inability to control conduct and the
8 lack of successful completion of sex offender treatment are
9 probably the most important in this case.

11:02 10 Q. Let's start with the first one; the inability to control
11 conduct.

12 Can you explain why Mr. Charboneau meets that factor here?

13 A. Sure. So that factor, according to the federal register,
14 references offending while under supervision, when likely to
11:02 15 get caught, statements of intent to re-offend or admission of
16 an inability to avoid re-offending or inability to control
17 behavior.

18 And in Mr. Charboneau's case, he's offended while on
19 supervision, as his most recent case demonstrates; he's
11:03 20 offended when likely to get caught, as demonstrated I believe
21 in all of his cases. So with his daughter there was a
22 five-year-old witness and his sister was coming back soon to
23 pick them up and obviously his own daughter identified who had
24 raped her. So that's certainly suggestive of a good chance to
11:03 25 be caught. With the -- I'm sorry. That wasn't the most

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11:03 1 recent.

2 The most recent one with the niece, I believe her
3 girlfriend was in the bed with her when he first was sexually
4 abusing her with having oral sex on her and then they kicked
11:03 5 him out and then he came back again. So he was obviously known
6 for what he had already done; he had been identified as that.
7 So there is obviously lots of evidence of offending when likely
8 to get caught.

9 I don't know any statements of intent to re-offend. I
11:04 10 don't know that he's made any statements like that, but he
11 certainly said that he has difficulty controlling his behavior,
12 it's been brought up already where he said he felt out of
13 control on at least of two of those offenses.

14 Q. I want to look at one of those offenses in particular,
11:04 15 this is mostly for the record, but turn to Government's Exhibit
16 No. 16.

17 A. Yes, I'm there.

18 Q. At the page marked 144.

19 A. Yes.

11:04 20 Q. Paragraph 21 at the top, lines two through five. Can you
21 explain to us what this is saying as far as his admission of
22 inability to control his conduct?

23 A. Sure. In that paragraph it's describing that
24 Mr. Charboneau discussed that he had a loss of control when --
11:05 25 during the rape of his daughter.

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11:05 1 Q. Let's move then to the second factor that you mentioned,
2 which is failure to successfully complete sex offender
3 treatment.

4 A. Yes.

11:05 5 Q. Has Mr. Charboneau ever successfully completed sex
6 offender treatment?

7 A. Not as far as I know.

8 Q. At the time of his most recent offense, was he
9 participating in sex offender treatment?

11:05 10 A. Yes, he was.

11 Q. You heard Dr. Holden's testimony that Mr. Charboneau is
12 currently in sex offender treatment at Butner, right?

13 A. Yes.

14 Q. In your opinion, has Mr. Charboneau made enough progress
11:05 15 in that treatment to make him not sexually dangerous?

16 A. No. I think he's still early on in treatment.

17 Q. Do you think Mr. Charboneau needs some other kind of
18 treatment in addition to sex offender treatment?

19 A. Yes. He absolutely needs substance abuse treatment as
11:05 20 well.

21 Q. Is Mr. Charboneau currently in substance abuse treatment?

22 A. No, he's not, other than Alcoholics Anonymous.

23 Q. Is going to Alcoholics Anonymous the same as substance
24 abuse treatment?

11:06 25 A. No, it's not.

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11:06 1 Q. Is going to Alcoholics Anonymous enough to make him not
2 sexually dangerous?

3 A. No, I don't believe it is.

4 Q. And you also heard from Dr. Holden that Mr. Charboneau
11:06 5 continues to deny that he has an alcohol problem?

6 A. Yes.

7 Q. Are there protective factors that would reduce
8 Mr. Charboneau's risk of re-offending?

9 A. I assessed protective factors, however, I don't believe
11:06 10 any are present in this case.

11 Q. Again, just for the record, Government's Exhibit 5, the
12 page marked 544, that's your basis for your conclusion there on
13 the protective factors?

14 A. Yes.

11:06 15 Q. Why isn't Mr. Charboneau's age a protective factor?

16 A. He is approaching 60, and 60 is considered -- age above 60
17 is certainly considered -- especially on the Static-99R, that
18 can reduce someone's risk on the Static-99R, but his age of --
19 I believe he was 55 when I scored this and 57 now, is already
11:07 20 addressed in the Static-99R, the points have been adjusted for
21 his current age.

22 Q. Why aren't medical issues a protective factor?

23 THE COURT: Medical what?

24 MR. ANDERSON: Issues.

11:07 25 THE WITNESS: For Mr. Charboneau, he's a very healthy

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11:07 1 individual. I don't believe he has any medical diagnoses at
2 all.

3 BY MR. ANDERSON:

4 Q. What about Mr. Charboneau's time in the community, is that
11:07 5 a protective factor in any way here?

6 A. Time in the community is considered protective if there's
7 a significant period of time since the last sexual offense that
8 someone has been in the community, and Mr. Charboneau is
9 still -- he's been in prison since his last sexual offense so
11:07 10 he has not had any time in the community since then.

11 Q. What about his two-year term of supervised release, is
12 that a protective factor in any way for him?

13 A. Certainly supervised release can be a protective factor,
14 but in this case, I don't believe it is.

11:08 15 Q. Why not?

16 A. It's a rather short term of supervised release. I don't
17 know that he could successfully complete a term of sex offender
18 treatment within two years, especially as Dr. Holden testified
19 it's rather slow-going with him because of his communication
11:08 20 and significant shame, so it's difficult for him to trust
21 people.

22 And then history bears the evidence that he was not
23 successful in supervision the very last time he was out and he
24 sexually offended while he was on supervision, after completing
11:08 25 substance abuse treatment and while he was in sex offender

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11:08 1 treatment.

2 Q. What about a well-developed relapse prevention plan and
3 release plan, can that be beneficial to an offender who is
4 released?

11:08 5 A. Yes.

6 Q. Did you read the transcript of Mr. Charboneau's
7 deposition?

8 A. I did.

9 Q. Specifically the section where he discussed his plans?

11:09 10 A. Yes.

11 Q. Can you briefly summarize what those release plans were?

12 A. I'd have to refresh my memory on that one.

13 Q. Take a look at Government's Exhibit No. 21.

14 A. Yes.

11:09 15 Q. Flip specifically to page 86, that's the start. And his
16 discussion for the record -- for the record, his discussion
17 goes from page 86 to page 91 and then there's another reference
18 to his release plans on page 96.

19 Just take a minute to look through that, please.

11:10 20 A. What was that other page that you mentioned it referenced?

21 Q. 96.

22 A. Yes.

23 Q. Having looked through that, does that refresh your
24 recollection as to Mr. Charboneau's release plans?

11:10 25 A. Yes, it does.

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11:10 1 Q. Can you please describe what those release plans are?

2 A. He plans to avoid alcohol and find a place to live and try
3 to get a job.

4 Q. Did he provide any details beyond that?

11:11 5 A. No, not that I could tell. Again, his communication is a
6 bit difficult to weed through, but it didn't appear anything
7 and he seemed unaware of the fact that his family had suggested
8 they were not going to give him any support.

9 Q. Did he identify exactly how he was going to avoid alcohol?

11:11 10 A. I think he said he was going to leave it alone.

11 Q. In your opinion, is that an effective relapse prevention
12 plan?

13 A. No, it is not.

14 Q. And are those effective release plans --

11:11 15 A. No.

16 Q. -- that would be beneficial for an offender of release?

17 A. No.

18 Q. Can strong community support be beneficial to an offender
19 who is released?

11:11 20 A. Yes, it can.

21 Q. Is it beneficial to Mr. Charboneau if he were to be
22 released?

23 A. No, he doesn't have any support in the community.

24 Q. I have just a couple additional items.

11:12 25 You didn't diagnose Mr. Charboneau with paraphilia, right?

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11:12 1 A. That's correct.

2 Q. In your opinion, does that make him any less sexually
3 dangerous on the Adam Walsh Act?

4 A. No. I believe his alcohol use disorder is so severe in
11:12 5 this case that it qualifies as a serious mental illness,
6 abnormality or disorder and it would lead to that serious
7 difficulty from refraining.

8 Q. In Government's Exhibit No. 5, that's your report at the
9 page Bates labeled 544?

11:12 10 A. Yes.

11 Q. The third paragraph down, that paragraph begins, "Negative
12 social influences."

13 A. Yes.

14 Q. And I'm looking specifically at lines two and three, the
11:13 15 line, "Given repeated descriptions"; do you see that?

16 A. Yes.

17 Q. You note there had been repeated descriptions of
18 Mr. Charboneau as a loner?

19 A. Yes, in the records.

11:13 20 Q. Does that in any way, in your opinion, make him less
21 sexually dangerous, the fact that he's been described as a
22 loner?

23 A. No.

24 Q. Why not?

11:13 25 A. So he's been described as a loner kind of throughout his

H. Ross - Direct Examination

11:13 1 life and he has been still been able to find individuals while
2 he was drinking that he can victimize. So I don't believe
3 that's a protective factor in any way. In fact, that kind of
4 feeds into the lack of emotionally intimate relationships with
11:13 5 people, that would be -- kind of raise his risk.

6 THE COURT: What paragraph are you on?

7 MR. ANDERSON: Your Honor, it's the page Bates
8 labeled 544 on Government's Exhibit No. 5, it's the third
9 paragraph on the top beginning, "Negative social influences,"
11:13 10 and the second line, "Given repeated description of
11 Mr. Charboneau" is the beginning of the line.

12 THE COURT: Thank you.

13 BY MR. ANDERSON:

14 Q. Dr. Ross, you mentioned that Mr. Charboneau has been
11:14 15 described as a loner all his life. Flip to page 532 of your
16 report.

17 A. (The witness complied.)

18 Q. Do you remember a particular assessment that was conducted
19 in 1982 by Dr. Jeffrey McKee?

11:14 20 A. Yes.

21 Q. And if you look at the first paragraph of mental health
22 history, that's where he talks about the assessment by
23 Dr. McKee?

24 A. That's correct.

11:14 25 Q. Move down to the blocked quote beginning, "In summary."

H. Ross - Direct Examination

11:14 1 A. Uhm-uhm.

2 Q. What does Dr. McKee say about Mr. Charboneau's status as a
3 loner?

4 A. He said he appears to be a rather immature, inept loner
11:14 5 who appears to have difficulty developing close, reciprocal,
6 nurturing relationships with others.

7 Q. That assessment was in August of 1982?

8 A. Yes.

9 Q. How many of Mr. Charboneau's sexual offenses has he
11:15 10 committed since then?

11 A. I believe three.

12 Q. Most of Mr. Charboneau's offenses have been against family
13 members, as we heard from Dr. North's testimony, right?

14 A. Correct.

11:15 15 Q. And as you mentioned, and as Dr. North mentioned, and as
16 we saw in Government Exhibit No. 8, Mr. Charboneau's family
17 doesn't want him back?

18 A. Correct.

19 Q. In your estimation, does that make him any less likely to
11:15 20 commit a sexual offense if released?

21 A. No.

22 Q. Why not?

23 A. I believe his offenses were against family members solely
24 because they were convenient victims of opportunity while he
11:15 25 was intoxicated, not because they were targeted in some way

H. Ross - Direct Examination

11:15 1 because they were members of his family.

2 Q. And we've heard a lot about Mr. Charboneau's institutional
3 behavior and how good he is in an institution, right?

4 A. Yes.

11:15 5 Q. And how he can go long stretches of over a decade, in at
6 least two cases, of good institutional behavior?

7 A. Yes.

8 Q. Without drinking alcohol, at least there is no evidence of
9 it, right?

11:16 10 A. That's correct.

11 Q. Does that, in your opinion, make him less sexually
12 dangerous under the Adam Walsh Act if he were released?

13 A. No.

14 Q. Why not?

11:16 15 A. I believe that he does so well in institutions solely
16 because of the restrictions on his behavior. When -- kind of
17 as Dr. Holden said, when he's told what to do or suggested what
18 to do, he does well in a restricted environment. But when he's
19 out in the community and he can make -- he has some

11:16 20 independence in his choices and he has the peer pressure, he's
21 just not successful. He doesn't have the skills and abilities
22 currently to be successful in that environment.

23 Q. And we talked about the fact that Mr. Charboneau on New
24 Year's Eve in 2001, a month or so after he had joined the
11:16 25 residential program, had a drink.

H. Ross - Direct Examination

11:16 1 A. Yes.

2 Q. How does that impact your understanding on this particular
3 topic that we're just discussing, which is that he behaves well
4 in an institution but appears in the community to devolve?

11:17 5 A. That's evidence of it. So when he's in a restricted
6 environment, he doesn't drink. As much as we'd like to say in
7 the Bureau of Prisons that inmates don't have access to alcohol
8 or drugs, they do, they can get it if they work hard enough at
9 it. And Mr. Charboneau hasn't done that; he hasn't sought it
11:17 10 out. But when it's all around him in the community and that
11 structure is not there, he just can't control himself.

12 Q. Even when he's in the residential program?

13 A. Even when he's in the residential program. That is a
14 little bit more free than prison.

11:17 15 Q. And you talked about prisoners having access to alcohol
16 while in the Bureau of Prisons. So I want to just touch on
17 this very briefly.

18 Turn to Government's Exhibit No. 21, please, which is
19 Mr. Charboneau's deposition.

11:18 20 A. Yes.

21 Q. When you read through Mr. Charboneau's deposition, do you
22 recall him talking about whether he has ever seen hooch while
23 he's been at Butner in the Maryland unit?

24 A. I recall the discussion -- I don't remember if he said,
11:18 25 though, if he had seen it or not.

H. Ross - Direct Examination

11:18 1 Q. Turn to page 51, please.

2 A. Yes.

3 Q. And down at line 17 to line 19.

4 A. Yes.

11:18 5 Q. Does that refresh your recollection as to whether he had
6 seen hooch in the Maryland unit?

7 A. In the Maryland unit he said he hadn't seen it, that's
8 correct. I believe he said previously he saw some officers
9 carrying some hooch that had been seized on another unit

11:19 10 previously.

11 Q. And one final question: We heard about this a little bit
12 in Dr. North's testimony; that Mr. Charboneau has committed
13 numerous offenses while intoxicated.

14 A. Yes.

11:19 15 Q. Four of those were sexual offenses, right?

16 A. Correct.

17 Q. But the rest of them were nonsexual?

18 A. That's correct.

19 Q. Does that somehow demonstrate that he has volitional
11:19 20 control or not sexually dangerous if released?

21 A. No, I don't believe it does.

22 Q. Why not?

23 A. The rest of his offenses, as Dr. North suggested, were
24 relatively minor, most were alcohol-related. Disorderly
11:19 25 conduct, public intoxication, possession of alcohol, I believe,

H. Ross - Direct Examination

11:19 1 I think a couple of assaults and maybe one petit larceny.

2 So I think that demonstrates that, yes, absolutely, he
3 makes lots of kinds of poor decisions when he's intoxicated;
4 but specifically, he makes poor sexual decisions. Probably not
11:20 5 even decisions. He impulsively acts with this sexual behavior
6 when he's intoxicated and it doesn't stop and it tends to
7 happen, at least more recently, relatively recently to him
8 leaving a secured or more restricted environment, so it seems
9 to some degree to be intensified.

11:20 10 I don't believe in his last period of supervision he had
11 any other kind of offenses other than alcohol and raping an
12 individual. So that's very concerning to me, and I don't think
13 that's in any way evidence that sexual -- inappropriate sexual
14 behavior is not a serious concern in this case.

11:20 15 Q. Just to recap: Based on all the considerations that we
16 just discussed and the ones in your report in Government's
17 Exhibit No. 5, have you formed an opinion to a reasonable
18 degree of professional certainty as to whether Mr. Charboneau
19 is sexually dangerous under the Adam Walsh Act?

11:21 20 A. I have.

21 Q. And what is that opinion?

22 A. I believe he does meet criteria as a sexually dangerous
23 person.

24 MR. ANDERSON: Nothing further.

11:21 25 THE COURT: Cross-Examination?

H. Ross - Cross-Examination

CROSS-EXAMINATION

BY MS. MAHAN:

Q. Good morning, Dr. Ross.

A. Good morning.

Q. You determined that Mr. Charboneau met criteria, as you just testified, correct?

A. Correct.

Q. But you did not diagnose any paraphilia, correct?

A. That's correct.

Q. And you did not diagnose a personality disorder, correct?

A. That's correct.

Q. The only diagnosis that you relied on in your report as a severe mental disease or defect for purposes of the Adam Walsh Act is the alcohol use disorder, correct?

A. That's correct.

Q. Now, for purposes of Prong 3, you considered a number of exacerbating or dynamic risk factors, correct?

A. Yes.

Q. And, in fact, you determined that Mr. Charboneau had few exacerbating dynamic risk factors, correct?

A. Yes, I think he had less than half.

Q. There was no evidence of sexual preoccupation, correct?

A. Correct.

Q. No evidence of deviant sexual interest, correct?

A. Yes.

H. Ross - Cross-Examination

11:22 1 Q. No evidence of emotional congruence with children,
2 correct?

3 A. Correct.

4 Q. No evidence of grievance or hostility, correct?

11:22 5 A. Correct.

6 Q. No evidence of an offense-supportive attitude, correct?

7 A. Correct.

8 Q. You also determined that he does not have a high risk as
9 categorized in the actuarial assessment score; isn't that
11:22 10 correct?

11 A. Yes.

12 Q. Now, you were just asked some questions about
13 Mr. Charboneau's criminal record. You would agree that --

14 THE COURT: Excuse me. What page in your report were
11:22 15 you just going -- was Ms. Mahan asking you about the dynamic
16 risk factors?

17 THE WITNESS: The dynamic risk factors start on
18 page 17 of my report. I can't give you the Bates numbers.

19 MS. MAHAN: It's Bates 543, Your Honor.

11:23 20 BY MS. MAHAN:

21 Q. Dr. Ross, you would agree that Mr. Charboneau was
22 intoxicated during all of his sex offenses, correct?

23 A. Yes.

24 Q. But you also listed what is a very lengthy history of
11:23 25 non-criminal sexual charges on page 8 and 9 of your report;

H. Ross - Cross-Examination

11:23 1 isn't that correct?

2 A. That's correct.

3 Q. And just for the record, that is Bates 534 and 535; is
4 that correct?

11:23 5 A. I believe so, yes.

6 Q. A number of those non-sexual charges, as you previously
7 testified, involved intoxication, correct?

8 A. Yes.

9 Q. So it's fair to say that intoxication has been a problem
11:23 10 for Mr. Charboneau in terms of both sex offenses and in terms
11 of general criminal activity, correct?

12 A. Yes.

13 Q. Now, you testified that you did not interview
14 Mr. Charboneau, correct?

11:24 15 A. Correct. We had a brief meeting where I explained the
16 process to him, but he chose eventually not to participate in
17 the interview.

18 Q. But you did -- after listening to the testimony of
19 Dr. North and Dr. Holden today, you would agree that it's your
11:24 20 opinion that he's been denying that he has a problem with
21 alcohol, correct?

22 A. Yes.

23 Q. And you -- Mr. Anderson had you look at Mr. Charboneau's
24 deposition testimony regarding his release plan; do you recall
11:24 25 that just a few minutes ago?

H. Ross - Cross-Examination

11:24 1 A. Yes.

2 Q. If you would, would you please turn to Government's
3 Exhibit 21, page 86.

4 A. Yes, I'm there.

11:24 5 Q. Starting on page 18 -- I'm sorry, line 18 and continuing
6 to page 87, line 10, would you read that please, to yourself.

7 A. Sure. Yes, I've read it.

8 Q. You would agree that in that section Mr. Charboneau, in
9 fact, says that he needs to leave alcoholism alone, doesn't he?

11:25 10 A. I'm sorry. Your question was that he said that he needs
11 to leave it alone -- what was your exact statement?

12 Q. I said he wants to prove that he can -- I think I didn't
13 say this, but I'm saying it now. He wants to prove that he can
14 leave the alcoholism alone.

11:25 15 A. Yes, he says that, just the way he did with drugs.

16 Q. You were discussing Mr. Charboneau's relapse prevention
17 plan, which he was discussing in this section of the deposition
18 earlier, correct?

19 A. I would call it more like a release plan, not a relapse
11:26 20 prevention plan, but yes.

21 Q. In your current job at the Bureau of Prisons, you're not
22 involved in treating offenders, correct?

23 A. That's correct.

24 Q. And you're not involved in creating relapse prevention
11:26 25 plans, are you?

H. Ross - Cross-Examination

11:26 1 A. Not creating them. I'm involved in assessing them for
2 individuals who have gone through at least part of the
3 treatment program and are up for release.

4 Q. But you're not involved in creating them?

11:26 5 A. That's correct.

6 Q. Now, there was some discussion about the time that
7 Mr. Charboneau was released from prison in 2000 and was in the
8 community until 2003. Would you agree that that is true; that
9 he was in the community from roughly 2000 to 2003?

11:26 10 A. Yes.

11 Q. And he discussed that his family had disowned him prior to
12 that point, correct?

13 A. If I said "disowned," I'm not sure that's accurate. There
14 was a document that referenced that his family, at least the
11:27 15 members that had come forward, didn't want anything to do with
16 him.

17 Q. And that family is from North Dakota, correct?

18 A. That's correct.

19 Q. During the time that Mr. Charboneau was in the community
11:27 20 from 2000 to 2003, he was, in fact, on release in South Dakota,
21 wasn't he?

22 A. I think maybe very early on it was North Dakota and then
23 it was moved to South Dakota, yes, so he can get more access to
24 treatment.

11:27 25 Q. There was no evidence that he had any family support

H. Ross - Cross-Examination

11:27 1 during that time period, is there?

2 A. His victim was his niece, so he was having contact with a
3 family member and drinking with her and spending time together
4 I think for six months prior.

11:27 5 Q. But the immediate family that referenced not providing
6 Mr. Charboneau with any support, there's no evidence during
7 that time period he had any support from them, correct?

8 A. Right. I don't believe he did, no.

9 Q. Now, you discussed some timing with Mr. Anderson during
11:28 10 your direct testimony during that time period. You said that
11 he entered the Behavior Management System in November of 2001;
12 is that correct?

13 A. Yes, that's what I said.

14 Q. And just for reference, I'm on Government's Exhibit 10,
11:28 15 Bates 09.

16 A. Yes, I'm there.

17 Q. I believe you testified that he entered into residential
18 placement BMS on November 15th, 2001, correct?

19 A. Yes.

11:28 20 Q. And he admitted to drinking alcohol on New Year's Eve,
21 which would have been December 31st, 2001, correct?

22 A. Yes.

23 Q. There is no evidence that he engaged in any sexually
24 dangerous behavior on that date, is there?

11:29 25 A. No, there's not.

H. Ross - Cross-Examination

11:29 1 Q. And you also testified that he drank alcohol on
2 April 22nd, 2003, correct?

3 A. Yes, I believe that's right.

4 Q. And there's no evidence that he engaged in any sort of
11:29 5 sexually dangerous behavior or child molestation on that date,
6 correct?

7 A. That's correct.

8 Q. And in fact, you also testified that he was back in the
9 BMS on I believe March 28th, 2002; is that correct? I believe
11:29 10 it was February, 2002.

11 A. Yeah. I don't think I knew an accurate date, but I know
12 early on, sometime after January, he was in detox for 12 days
13 and then was returned back to BMS, so I estimated it was
14 probably in February.

11:29 15 Q. And there's no evidence of any sort of problems until he
16 drank alcohol on April 22nd, 2003, correct?

17 A. I just want to make sure I'm understanding your question
18 correctly. There was no suggestion of alcohol use between then
19 and April, nor any sexual -- you know, no complaints about
11:30 20 sexual behavior either. I'm not sure which way you're asking
21 about. As I can recall, there where are no concerns at all
22 during that period.

23 Q. And that would be a period of over one year, correct?

24 A. Yes. I think it was noted that he was progressing so
11:30 25 well, that's why they moved him to an apartment on his own.

H. Ross - Redirect Examination

11:30 1 THE COURT: Anything else, Mr. Anderson?

2 MR. ANDERSON: Briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. ANDERSON:

11:30 5 Q. Dr. Ross, you talked with Ms. Mahan about some of the
6 dynamic factors that Mr. Charboneau did not show.

7 A. Yes.

8 Q. Does Mr. Charboneau need to show all or most of the
9 dynamic factors in order to be sexually dangerous, in your
11:31 10 opinion?

11 A. No.

12 Q. One of the dynamic risk factors that we talked about on
13 your direct was his conduct on supervision, his failure to
14 comply with rules and regulations, right?

11:31 15 A. Yes.

16 Q. Is that one of the more robust risk factors for sexual
17 re-offending?

18 A. It is.

19 Q. You talked again on your cross-examination with Ms. Mahan
11:31 20 about the fact that when Mr. Charboneau was released from BOP
21 in 2000 he initially went to North Dakota?

22 A. I believe so, yes.

23 Q. But his supervision was transferred to South Dakota?

24 A. Yes.

11:31 25 Q. And he didn't have any family support in South Dakota?

H. Ross - Redirect Examination

11:31 1 A. Right.

2 Q. What happened in July of 2003 in South Dakota?

3 A. That was when he raped his niece.

4 Q. You also talked about -- with Ms. Mahan about the two
11:31 5 instances in which Mr. Charboneau had alcohol when he was in
6 residential treatment or in the residential program, BMS.

7 A. Yes.

8 Q. And as you explained, there was no evidence that
9 Mr. Charboneau sexually assaulted a woman on New Year's Eve in
11:32 10 2001 when he drank?

11 A. That's correct.

12 Q. Was there any evidence that a woman was present when he
13 was drinking?

14 A. I have no evidence of anything. All I know is that he
11:32 15 reported to a treatment provider or to his probation officer
16 that he had drank on that evening.

17 Q. What about the 2002 incident when he reported drinking,
18 did he report there was a woman there when he was drinking?

19 A. I don't believe any description of the event was
11:32 20 mentioned.

21 Q. What does the evidence show about what happens when
22 Mr. Charboneau does drink and there is a woman present?

23 A. We certainly know that at least on four occasions when
24 he's drank he has engaged in sexually violent conduct or child
11:32 25 molestation.

G. Zinik - Direct Examination

MR. ANDERSON: Nothing further, Your Honor.

THE COURT: Ms. Mahan?

MS. SHEA: Nothing further, Your Honor.

THE COURT: Thank you. Please watch your step

stepping down.

The United States may call your next witness.

MR. ANDERSON: The United States called Dr. Gary
Zinik.

GARY ZINIK, Ph.D

having been duly sworn, testified as follows:

THE COURT: Good morning, Dr. Zinik.

THE WITNESS: Good morning, Your Honor.

THE COURT: As soon as you're situated, one of the
lawyers at this table over here are going to have some
questions for you. Feel free to adjust the microphone.

You may examine the witness.

DIRECT EXAMINATION

BY MR. ANDERSON:

Q. Good morning, Dr. Zinik.

A. Good morning.

Q. Could you give your full name for the record and where you
currently practice?

A. My name is Gary Zinik and I'm a forensic psychologist, and
I have a private practice in Ventura, California.

Q. And for the benefit of the court reporter, can you please

G. Zinik - Direct Examination

11:34 1 spell your last name.

2 A. Z-I-N-I-K.

3 Q. Thank you.

4 Dr. Zinik, you have experience in forensic psychology,

11:34 5 right?

6 A. Yes.

7 Q. Do you also have experience in sex offender treatment?

8 A. Yes.

9 Q. Can you please describe that experience, please?

11:34 10 A. Okay. For about the last 20 years I've done sex offender

11 treatment in my private treatment. I do both individual and

12 group treatment with sex offenders who are on probation in

13 Ventura County and refer to me for treatment, and so I've been

14 trained in sex offender treatment and been to many conferences,

11:34 15 and I still currently do it in my private practice.

16 Q. Have you ever testified as a expert in sex offender

17 treatment?

18 A. Yes.

19 Q. Did you evaluate Mr. Charboneau pursuant to the Adam Walsh

11:34 20 Act?

21 A. Yes.

22 Q. What did you do to evaluate him?

23 A. First, I reviewed all of the discovery records that were

24 sent to me by the U.S. Attorney's Office, and then I did have

11:35 25 an interview with Mr. Charboneau on, let's see, it was --

G. Zinik - Direct Examination

11:35 1 Q. I'll direct your attention, Dr. Zinik, to Government
2 Exhibit No. 7, the page labeled 1643, the first paragraph under
3 "Sources of Information."

4 A. Yes.

11:35 5 Q. First line.

6 A. Thank you. February 18th, 2016, is when I interviewed
7 Mr. Charboneau.

8 Q. Did you write a report of your findings?

9 A. I did.

11:35 10 Q. And we're looking at Government's Exhibit No. 7?

11 A. Yes.

12 Q. And your CV is Government's Exhibit No. 6, just one tab
13 before that?

14 A. Correct.

11:36 15 Q. Did you also review the reports of Dr. North, Dr. Ross and
16 Dr. Plaud in this case?

17 A. Yes.

18 Q. And aside from those reports, did you review any other
19 documents after you had written your report?

11:36 20 A. Yes. I reviewed the deposition from Mr. Charboneau and
21 the report and some treatment records from Dr. Holden.

22 Q. And in this case, have you formed an opinion to a
23 reasonable degree of professional certainty as to whether
24 Mr. Charboneau is a sexually dangerous person under the Adam
11:36 25 Walsh Act?

G. Zinik - Direct Examination

11:36 1 A. Yes.

2 Q. What is that opinion?

3 A. I do believe that he's sexually dangerous.

4 Q. Let's start with Prong 1, and we'll make this pretty
11:36 5 quick. In your opinion, has Mr. Charboneau previously
6 committed or attempted to commit acts of sexually violent
7 conduct or child molestation?

8 A. Yes, on four occasions.

9 Q. And the basis for that opinion, for the record, is
11:36 10 Government's Exhibit No. 7, the pages Bates labeled 1644 to
11 1655; is that right?

12 A. Yes.

13 Q. Were you in the courtroom when Dr. North and Dr. Ross
14 testified about their basis on Prong 1?

11:37 15 A. I was.

16 Q. Do you have anything to add?

17 A. No.

18 Q. On Prong 2, did you conclude that Mr. Charboneau suffers
19 from serious mental illnesses, abnormalities or disorders?

11:37 20 A. Yes, I did.

21 Q. And for the record, your analysis on Prong 2 is in
22 Government's Exhibit 7, pages labeled 1662 to 1665?

23 A. Yes.

24 Q. What specific diagnoses did you give?

11:37 25 A. I gave Mr. Charboneau four diagnoses: Alcohol use

G. Zinik - Direct Examination

11:37 1 disorder, severe in a controlled environment; inhalant
2 disorder, severe in sustained remission; inhalant-induced mild
3 neurocognitive disorder; and other specified personality
4 disorder with schizotypal and schizoid features.

11:37 5 Q. On alcohol use disorder, how would you describe
6 Mr. Charboneau on dependence on alcohol?

7 A. I think this has been a chronic life-long dependence on
8 alcohol, and we know from the records he began drinking alcohol
9 as a young teenager, even though he was also using inhalants at
11:38 10 that time he -- apparently he stopped using those in his early
11 twenties, but he continues to use alcohol and has never stopped
12 since then and repeatedly uses it when he's in the community,
13 and I would say alcohol is really his drug of choice and his
14 most persistent addiction.

11:38 15 Q. In your opinion, why is he so dependent on alcohol?

16 A. Well, I think -- we've already heard how Mr. Charboneau,
17 ever since he was a youngster he was a loner, he was isolated,
18 he was exhibiting odd behavior, and I think he has a -- I think
19 Mr. Charboneau is confused. He has this neurocognitive
11:39 20 disorder that manifests itself in difficulty with verbal
21 expression and language in expressing himself. He's not able
22 to communicate well with other people. He isolates himself.
23 He's a loner, and he's very anxious. And he kind of -- the
24 world is kind of a foreign, confusing place to him. He really
11:39 25 doesn't understand how things work. He doesn't understand how

G. Zinik - Direct Examination

11:39 1 television works, for example. He doesn't know where the
2 images come from and why there is this constant screen with
3 images over the TV.

4 So he's in this chronic state of confusion and anxiety and
11:39 5 he drinks alcohol in order to sooth himself and calm himself
6 and relax himself and help him cope with his fears and
7 anxieties, and give him I think what Dr. North called the
8 liquid courage to approach women and tend to be sexual with
9 women, but that typically turns out badly.

11:40 10 Q. Did you hear Dr. Ross and Dr. North explain why they
11 believe alcohol use disorder in Mr. Charboneau's case is a
12 serious mental illness, abnormality or disorder?

13 A. I did.

14 Q. Do you agree with their assessment?

11:40 15 A. I do.

16 Q. Do you have anything to add to what they've already talked
17 about on that particular point?

18 A. Well, just to re-summarize it, I mean, I think

19 Mr. Charboneau is, like I said, he's anxious, he's scared,
11:40 20 he's -- you know, when he drinks it calms him, it soothes him,
21 it relaxes him, it disinhibits him and it allows him -- he
22 becomes sexually aroused, at least some of the time. And I
23 think if he has been drinking and he becomes sexually aroused
24 and he's in the presence of a vulnerable female of just about
11:41 25 any age, child or adult, he would have serious difficulty

G. Zinik - Direct Examination

11:41 1 refraining from sexual assault.

2 I think these circumstances, you know, the alcohol, the
3 disinhibition, the emergence of his sexual feelings, the
4 confusion, he doesn't understand how to manage his sexual
11:41 5 feelings. Sexual arousal makes him anxious. Women make him
6 anxious. He's afraid of women. He doesn't know how to
7 approach women. He's never really had healthy intimate or
8 sexual relationships with women. So when these circumstances
9 occur, intoxication, sexual arousal, and being in the company
11:41 10 of a vulnerable female, it's like a perfect storm that can --
11 and he can erupt very quickly into a violent rapist.

12 Q. You mentioned that Mr. Charboneau, he is sexually aroused
13 at least some of the time when he drinks. Did Mr. Charboneau
14 in your interview with him tell you how often he is sexually
11:42 15 aroused when he drinks?

16 A. He didn't give me like a number or a measure or frequency,
17 but he did say that he -- when we were talking about the 1988
18 rape of his daughter, he did admit that he was sexually aroused
19 and he did reference that being intoxicated does make him feel
11:42 20 sexually aroused. He thought that was normal, so it sounds
21 like it's a fairly common occurrence for him.

22 Q. Let's take a look, in particular, at your report, again
23 that's Government Exhibit No. 7, page Bates 1661.

24 A. What page of my report is it?

11:42 25 Q. Page 19.

G. Zinik - Direct Examination

11:42 1 A. Thank you.

2 Q. The bottom paragraph there, just to give some context for
3 the record, the bracketed questions, are those your questions
4 that you posed to him?

11:43 5 A. Yes.

6 Q. And the unenforceable bracketed comments, those are the
7 responses that Mr. Charboneau gives?

8 A. Yes.

9 Q. Let's jump down to the sixth line down, and you see the
11:43 10 question there in brackets, "What kind of drugs"?

11 A. Yes.

12 Q. Can you read those two lines please?

13 A. So I asked, "What kind of drugs?"

14 He answered, "Alcohol, and being aroused by being drunk."

11:43 15 And I asked, "Do you get aroused when you get drunk?"

16 And he answered, "Well, everybody does. I always feel it.

17 It's normal to be aroused. There's nothing wrong with it."

18 I asked, "Are you talking about getting sexually aroused
19 when you get drunk?"

11:43 20 He said, "I get aroused, but I don't want to have sex.

21 I'd rather be embarrassed, but I don't want to have sex. I'd
22 rather get aroused and be embarrassed."

23 Q. We'll talk about that when we get to the schizoid-type
24 features. Quickly, before we get there, I want to talk about
11:44 25 inhalant use disorder. Do you have anything to add from what

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11:44 1 you already heard today from Dr. North about his inhalant use
2 disorder?

3 A. No, I don't think so.

4 Q. You also diagnosed, like Dr. North did, inhalant-induced
11:44 5 mild neurocognitive disorder.

6 A. Yes.

7 Q. Can you explain briefly why you diagnosed that?

8 A. Okay. There is some early records from the North Dakota
9 State Hospital system, where Mr. Charboneau spent a lot of
11:44 10 time, he had quite a few admissions as a teenager and young
11 adult where they described how his chronic inhalant abuse and
12 described neurocognitive impairment that he probably sustained
13 as a result of that. So that's where we begin to see those
14 records.

11:44 15 And I think that based on his current behavior, the way I
16 see this manifesting, he has been described as kind of shy and
17 meek and mild-mannered and cooperative, that's true, he's
18 generally that way. If you ask him sort of simple yes or no
19 questions or he has to perform simple concrete tasks on testing
11:45 20 and things like that, for example, he can do that. But when
21 you ask him an open-ended question where he has to sort of
22 think and organize his thoughts and articulate what he's
23 thinking and feeling, he just can't do that and he becomes --
24 he starts talking in almost nonsensical terms and he becomes
11:45 25 incoherent sometimes. So I think that's the way his

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11:45 1 neurocognitive impairment is currently manifested by the
2 impairment in expressive language.

3 Q. That brings us to the other specified personality
4 disorders, schizoid and schizotypal features.

11:46 5 A. Yes.

6 Q. Can you explain to us why you diagnosed Mr. Charboneau
7 with that?

8 A. All right. Again, I'm not the first one that has
9 diagnosed him that way. We see these diagnoses popping up in
11:46 10 his early records. He was diagnosed with schizoid personality
11 disorder back in the 1980s in the North Dakota State Hospital
12 system, and he was diagnosed with schizotypal personality
13 disorder more recently in the Board of Prisons terms when he
14 was incarcerated after the rape of his daughter in 1988. And
11:46 15 he's been described as a loner and as self-isolating and
16 keeping to himself.

17 And I also saw -- and there have been episodes when he
18 exhibited kind of bizarre thinking and what we call magical
19 thinking, some religiosity-type thinking where he seemed
11:47 20 preoccupied with religious themes trying to decipher the
21 mysteries of the Bible and things like this. As we said, he
22 doesn't like watching TV, doesn't like reading, he doesn't like
23 talking on the phone. So I think, you know, to the present day
24 he still manifests many of the symptoms of the, you know, what
11:47 25 I see as a combination of the schizoid and schizotypal

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11:47 1 personality disorder.

2 Q. And two of the schizoid features that you mentioned in
3 particular were his solitary nature, the descriptions of him as
4 a loner, and the fact that he has little interest in sexual
11:47 5 experience with others, which is alluded to in that quote that
6 you read a few minutes ago in your report.

7 A. Uhm-uhm.

8 Q. In your opinion, do those two somehow make him not
9 sexually dangerous in this case?

11:47 10 A. No, I don't believe they do. I know this looks a bit
11 somewhat paradoxical because you think someone who is a loner,
12 isolates and is afraid of women and doesn't want to get
13 married, doesn't want to have relationships with women, wants
14 to avoid sexual interactions with women, you would think that
11:48 15 that would make him safer. But the problem is that
16 Mr. Charboneau still has a significant libido, he still has a
17 sexual drive, he still masturbates a few times a month. Even
18 with masturbation, he talks about that makes him uncomfortable,
19 and he doesn't like to do it and he feels guilty about it and
11:48 20 he tries not to do it. He still has a significantly strong sex
21 drive so he still does it a few times a month.

22 So I think the problem here is that even though -- when
23 he's sober, like we already said, he does really well, and when
24 he's sober he stays away from women and he stays away from
11:48 25 relationships and friendships and so on. But when he's drunk,

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11:48 1 he gets disinhibited, he relaxes and his sexual feelings rise
2 to the surface, you might say. And if he is in the presence of
3 a vulnerable female, particularly someone that he may be
4 attracted to, he doesn't know how to manage those sexual
11:49 5 feelings. He's intoxicated, he has poor judgment, and he tends
6 to get violent and aggressive and commit sexual assault.

7 Q. Moving now to Prong 3, did you determine as a result of
8 the serious mental illness, abnormalities, or disorders that we
9 discussed that Mr. Charboneau would have serious difficulty
11:49 10 refraining from sexually violent conduct or child molestation?

11 A. Yes, I believe he would.

12 Q. For the record, your analysis is Government's Exhibit 7,
13 pages Bates labeled 1666 to pages 1670, and Dr. Zinik, for your
14 reference that is pages 24 to 28 of your report.

11:49 15 A. Thank you.

16 Q. Is that correct?

17 A. Yes.

18 Q. That's your analysis?

19 A. Yes.

11:50 20 Q. Can you please summarize your basis; and in particular,
21 explain to the Court how the interplay among his diagnoses that
22 you gave him factors into your analysis in Prong 3?

23 A. All right. Well, I think the diagnoses that I gave him,
24 you know, the alcohol use disorder, the neurocognitive
11:50 25 impairment disorder and the mixed personality disorder with

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11:50 1 schizoid and schizophrenic features, I think those all sort of
2 interact and are additive in a way and kind of act together to
3 continue to make him sexually dangerous.

4 I'm particularly concerned about the fact that he does not
11:50 5 understand the nature and severity of his alcohol abuse. He
6 does not seem to believe -- he makes a few statements about,
7 yeah, maybe it caused a problem in the past, but he doesn't
8 seem to understand that this is still his primary problem and
9 that he needs to stay clean and sober for the rest of his life
11:51 10 and never touch alcohol or any intoxicants again. I don't
11 think he understands the gravity of it.

12 He has not participated in structured substance abuse
13 treatment aside from the AA groups that he goes to, which it's
14 not clear if he's really invested and participating in those or
11:51 15 if he's just doing it to comply with the recommendations of his
16 treatment team.

17 So, you know, when people really accept that they --
18 they're alcoholics and begin a program of recovery, they talk
19 differently, they identify themselves this way and they
11:51 20 understand that sobriety is a primary value that they have to
21 follow and they structure their life around that. And I don't
22 believe Mr. Charboneau has -- he's anywhere close to
23 understanding that.

24 So I think, you know, he's still -- he needs a lot of
11:52 25 treatment. So I think there is still quite a few risk factors

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11:52 1 that are present in his profile as a result of his mental
2 disorders. These are serious disorders because, you know, it's
3 interesting that when he gets drunk he does not commit violent
4 acts towards men. A lot of alcoholics -- a lot of men with
11:52 5 drinking problems, you know, they get drunk and they act
6 aggressively toward other men, they get involved in bar fights
7 or fist fights. We don't see this in Mr. Charboneau's history.

8 There is only one nonsexual violent crime in his history
9 where he was arrested for assault and battery in 1985 and we
11:52 10 don't honestly know if that was a male or female victim.
11 Otherwise, all of his violent offenses were sexually violent
12 offenses toward other women.

13 So I think these mental disorders sort of act
14 synergistically to continue to make him sexually dangerous and
11:53 15 I think the fact that he has some significant dynamic risk
16 factors that are still present, he scores in the above-average
17 range on the Static-99.

18 On the SVR-20, which is another risk assessment scale that
19 I scored him on, he scores I think higher, he's in the high
11:53 20 risk range. I think that scale captures some of the risks that
21 is not captured by the Static-99. So I just think that there
22 is compelling evidence that he still remains sexually
23 dangerous.

24 Q. Dr. Zinik, let's assume that we have the exact same
11:53 25 Mr. Charboneau that we have today, the man who, as you said,

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11:53 1 has anxiety, who has the neurocognitive dysfunction as you
2 explained, but the only diagnosis that you gave was alcohol use
3 disorder and inhalant use disorder. You would still find
4 him -- in your opinion, he would still be sexually dangerous,
11:54 5 right?

6 A. Yes.

7 Q. All right. Let's discuss some of the details of your
8 analysis. And you already hit on the actuarials, the
9 Static-99R and Sexual Violent Risk 20, so I'll skip over those.

11:54 10 Let's analyze the dynamic factors as you did in your
11 report. What are the most important dynamic risk factors that
12 you believe are most important for Mr. Charboneau?

13 A. I think lack of emotionally intimate relationships with
14 adults, we've already said he's quite a loner, he's never
11:54 15 really had extended intimate relationships with women and
16 doesn't really seem to have friends or men that he's friendly
17 with or intimate with either. His family, as we've already
18 said, has been -- has disowned him and wants nothing to do with
19 him. Frankly, in that letter from 2014 that was signed by a
11:55 20 number of family members they're still terrorized -- terrified
21 of him and were pleading with Board of Prison terms not to
22 release him. So I think that is a current significant dynamic
23 risk factor that puts him at risk.

24 The second one is lifestyle impulsiveness. I think we've
11:55 25 seen throughout his life that he has acted very impulsively,

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11:55 1 particularly when he's been drinking, and he's really never
2 made good choices about -- he's never been able to hold a job,
3 he's never been able to -- the reports from his family describe
4 how he -- he really could not -- he was totally dependent on
11:55 5 family members, he couldn't live independently, he never could
6 cook for himself or do his own laundry. He was just so
7 impulsive and kind of infantile that he was never really able
8 to manage himself in the community.

9 And then we've got poor problem solving, which we've
11:56 10 already heard about. You know, I agree with Dr. North that
11 this is a primary risk factor, that in many ways overshadows
12 his functioning. When he's presented with a situation or a
13 problem that requires -- requires him to come up with a
14 solution, he either takes this passive posture and doesn't do
11:56 15 anything and waits and hopes that it passes or he will drink
16 and make poor decisions while intoxicated.

17 And then the last dynamic factor is poor cooperation with
18 supervision. I think we've already heard that the
19 meta-analysis research tells us that's one of the strongest,
11:56 20 most robust predictors of dynamic factors predicting sexual
21 recidivism, and this is well-demonstrated by Mr. Charboneau by
22 the fact that he continues to drink while he's on supervision
23 in the community, he's used marijuana a few times, and he puts
24 himself in higher risk situations by being intoxicated and
11:57 25 alone with a vulnerable female.

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11:57 1 So I think these are all significant problems that still
2 put him at risk.

3 Q. Did you also analyze the factors in BOP's guidelines for
4 assessing for sexual dangerousness?

11:57 5 A. Yes.

6 Q. Let's talk about a couple of those. First, in your
7 opinion, is -- that first factor, repeated contact or
8 attempting contact with one or more victims, is that an
9 important factor here?

11:57 10 A. It certainly is. We've already heard that he's sexually
11 assaulted four victims. So -- and at least after three of them
12 he was incarcerated. So he was incarcerated for 18 months
13 after the '82 sexual assault, but he was released and then
14 re-offended in 1987. So obviously being incarcerated didn't
11:58 15 work, so to speak, as a deterrent to change his behavior and
16 prevent him from acting that way again.

17 He committed another sexual assault in 1987. And then
18 that case was referred to the Devils Lake Trial Court so it was
19 pending, and less than a year later he committed another sexual
11:58 20 assault, this is the 1988 case, where he raped his 10-year-old
21 daughter.

22 So these are examples where even after incarceration and
23 even while a court case is currently pending he will commit new
24 sexual assaults. And then, of course, he did it again in 2003
11:58 25 when he was under lots of supervision, he was getting lots of

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11:58 1 support, he was in sex offender treatment and he drank and
2 committed another sexual assault. So he certainly meets that
3 BOP guideline.

4 Q. And what about a person's admission of inability to
11:59 5 control behavior, is that an important consideration of
6 Mr. Charboneau in this case?

7 A. I think it is, yes.

8 Q. Explain why, please.

9 A. He has made statements in the past when he lost control,
11:59 10 particularly during the rape of his daughter in 1988. He
11 described how he looked up and saw a black mask coming down at
12 him and he felt this vibration going through his body, which I
13 think was sexual arousal, and he lost control of himself and
14 started to hit his daughter and pull her clothes off. He said
11:59 15 the same thing to me, that he lost control.

16 So -- and he has made statements in his treatment program
17 where he felt that he still considered himself sexually
18 dangerous. So I think these are current statements that he's
19 making that reflect a serious difficulty refraining from sexual
12:00 20 violence.

21 Q. Another factor in those BOP's guidelines is offending
22 under supervision or likely to get caught. In your estimation,
23 is that important here, too?

24 A. Yes, it is.

12:00 25 Q. Just very briefly, why?

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12:00 1 A. I already said that he re-offended on probation in 2003,
2 while he was on probation for a prior sex offense, even though
3 he was getting lots of supervision and treatment and support.

4 And he, you know, his -- he's had four cycles of sexual
12:00 5 offending where he committed an offense, he got caught; and at
6 least after three of them, he was sanctioned and after a fourth
7 one in 1987 he was pending court proceeding, and the '87 and
8 '88 cases, they happened less than a year apart, sometimes we
9 call that rapid re-offending, when an offender commits two
12:01 10 sexual crimes within a year. So I think these are examples
11 where he meets that BOP guideline.

12 Q. And then finally, I believe this is Factor E in the BOP
13 guidelines, failure to successfully complete sex offender
14 treatment.

12:01 15 Has Mr. Charboneau ever completed sex offender treatment?

16 A. No. He started sex offender treatment -- I know he agreed
17 to the in-treatment I think it was February of 2016, last year,
18 and I think he started the groups and the program in April of
19 last year. And this is a good sign. You know, I think he's --
12:01 20 he understands that he's got a problem and he needs help for it
21 and he is participating in treatment, although it sounds like
22 he may take more of a passive posture in treatment. And what
23 we heard from Dr. Holden earlier is that he is participating,
24 but he's making very slow progress, but at least he's trying.

12:02 25 And I think this is a really good sign and he gets credit for

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12:02 1 the fact that he started treatment, but this is just the
2 beginning of a long road of intensive treatment that he really
3 needs to become safe again. And so he's getting started, but
4 he's got a long way to go.

12:02 5 Q. So in your opinion, has he made enough progress in sex
6 offender treatment to date that he would be safe for the
7 release to the community?

8 A. No.

9 Q. We heard when Dr. Holden was testifying, we saw a
12:02 10 document, particularly Government's Exhibit 24, about how
11 Mr. Charboneau continues to minimize or justify his offenses or
12 blame his victims. Do you recall hearing that?

13 A. Yes.

14 Q. How does that factor into your -- as to his progress and
12:02 15 treatment?

16 A. Well, I think it's going to be slow. I think, again, he's
17 just beginning to think about this for the first time in, you
18 know, many years, certainly since 2003. He's just starting to
19 think about it, he's just starting to talk about it, and he's
12:03 20 at the very beginning of the treatment program. And he's still
21 minimizing his offenses, he's still kind of claiming that the
22 victims were not his family members and denying kinship with
23 the victims to kind of somehow justify the sexual assaults
24 against them. He's still claiming that, you know, the -- his
12:03 25 daughter was not his daughter, and so I think he's still doing

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12:03 1 a lot of minimizing and denial. And this is typically what
2 you'd find at the beginning of sex offender treatment.

3 Q. You mentioned that he's starting to open up about his
4 offense conduct and his behavior. Did you hear Dr. Holden when
12:03 5 she was talking about how in her estimation he's opening up
6 because of the therapeutic alliance that he's starting to form
7 with her?

8 A. Yes.

9 Q. In your opinion, would it be detrimental to remove him
12:04 10 from that treatment at this point?

11 A. I think so. I think it would be a setback for him. I
12 think he's just beginning to form a healthy relationship with a
13 female adult, Dr. Holden. This may be the first time he's ever
14 done that.

12:04 15 So he's getting some practice at how to be honest and let
16 down his defenses and talk to her in his therapy sessions, and
17 this is a good thing that will help him develop those skills to
18 carry with him when he gets out in the community. And I think
19 if that were interrupted now, it would be a big setback and he
12:04 20 would have to start all over again and who knows if he would do
21 as well with another therapist.

22 Q. Do you think there is another form of treatment that
23 Mr. Charboneau needs in addition to sex offender treatment?

24 A. Substance abuse treatment, yes.

12:05 25 Q. Are Alcoholics Anonymous and substance abuse treatment,

G. Zinik - Direct Examination

12:05 1 are those the same?

2 A. No.

3 Q. Is going to Alcoholics Anonymous for Mr. Charboneau, is
4 that enough?

12:05 5 A. No.

6 Q. Moving on to protective factors. Just for the record,
7 your analysis is detailed in Government's Exhibit 7, pages
8 marked 1667 to 1668. Dr. Zinik, that's pages 25 and 26 of your
9 report; is that right?

12:05 10 A. Yes.

11 Q. I just want to talk about one of those in particular, and
12 that's Mr. Charboneau's age. What does the literature say
13 about age as a protective factor? Okay.

14 A. Well, certainly age, particularly advanced age becomes a
12:05 15 protective factor. We know that men in general who are past
16 middle aged, certainly past age 60, at least statistically, in
17 general have less sex drive, they're less interested in sex and
18 we certainly know that sex offenders have -- that their rates
19 of recidivism decline with age and decline dramatically after
12:06 20 60.

21 How does that pertain to Mr. Charboneau's case? I think
22 Mr. Charboneau -- he's 57. In their fifties, sex offenders in
23 their fifties, men in general in their fifties, there's quite a
24 wide range of sexual functioning and sexual interests. There's
12:06 25 a lot of men in their fifties that are still quite sexually

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12:06 1 active and virile and interested in sex, and we know that
2 Mr. Charboneau is in excellent physical health. He doesn't
3 have any medical problems or medical conditions that would
4 impair his physical functioning or shorten his lifespan, he's
12:06 5 not taking any medications of any kind. He also exercises a
6 lot. He's very fit. He told me that he walks about four miles
7 a day, four or five times a week and that he also skips rope
8 for an hour at a time about three times a week.

9 And I must say that I was quite impressed with the
12:07 10 skipping rope because I skip rope too for exercise and I'm
11 pretty fit and after 15 minutes I'm quite exhausted. So if
12 he's really telling the truth about skipping rope for an hour
13 at a time, he must be in really great shape.

14 So physically I think he's in good health. And being 57
12:07 15 at this point and considering everything else about him that we
16 know, I don't think his age operates as a protective factor to
17 make him any safer at this point.

18 Q. Did you hear Dr. North testify that Mr. Charboneau is
19 basically a 12- or 13-year-old in a 57-year-old's body?

12:07 20 A. Yes, I did.

21 Q. What is your take on that?

22 A. I think that's an interesting observation. I know in my
23 report what I said was -- and I'll say it again -- I think he's
24 the same person he was in 2003 when he committed the last
12:08 25 sexual offense. What I mean by that he is chronologically

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12:08 1 older, he's 13 or 14 years older, but emotionally and
2 psychologically I think he's the same person that he was back
3 in 2003.

4 Now, when I wrote my report I did not have the treatment
12:08 5 records from Dr. Holden and, you know, I think he is making --
6 I think this is an important step that he get some credit for,
7 the fact that he's begun the commitment treatment program and
8 he's making some small steps of progress. But again, I think
9 he basically has a long way to go. And I do think that due to
12:08 10 the chronic alcohol abuse and the inhalant abuse and the
11 resulting cognitive neurological impairment that that created
12 in his early years, his development was arrested at that time,
13 and I think he, in many ways, is, you know, emotionally and
14 psychologically very immature.

12:09 15 Q. Dr. Zinik, I only have three more items and I'll hit them
16 quickly. We heard a lot about Mr. Charboneau's behavior in an
17 institution and how well he behaves. In your estimation, does
18 that make him less sexually dangerous if released?

19 A. No.

12:09 20 Q. We've also heard about his general offense history and as
21 you heard, and as I'm sure you noted in the records, he has
22 committed a number of offenses while he's intoxicated, right?

23 A. Yes.

24 Q. And four of those were sex offenses?

12:09 25 A. Yes.

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12:09 1 Q. But the rest of them were not sexual offenses?

2 A. Yes.

3 Q. Does that somehow, in your opinion, suggest that he has
4 volitional control or that he's not sexually dangerous?

12:10 5 A. No.

6 Q. Why not? Can you explain that a little bit?

7 A. Well, because -- well, like I said, Mr. Charboneau has
8 committed two types of crimes, two types of -- two categories
9 of crimes. They have all been alcohol-related.

12:10 10 The first and most frequent category is the -- really
11 they're minor alcohol-related crimes like disturbing the peace
12 or disorderly conduct or crimes like that; and the other
13 category is sexual violence assaults against women, he has
14 committed four of those. He has not committed property crimes
12:10 15 like theft or burglary or things like that. He has not
16 committed nonsexual violent crimes like robbery or assault,
17 except one time in '85 and we don't know if that was a female
18 victim or not. So this is how he's prone to behave.

19 Given his history, he has these four cycles of sexual
12:11 20 offending that he has not learned from his treatment, from
21 prior incarceration and that he still minimizes his alcohol
22 problem, I think he's still sexually dangerous and this is the
23 kind of crime that he's likely to commit in the future.

24 Q. The third and final item that I have is that you haven't
12:11 25 diagnosed Mr. Charboneau with a paraphilia, right?

G. Zinik - Cross-Examination

12:11 1 A. Correct.

2 Q. In your opinion, does that make him not sexually
3 dangerous?

4 A. No.

12:11 5 Q. Why not?

6 A. Because I just think that, like I said, the -- if certain
7 factors line up for him, he -- if he gets drunk and if he gets
8 sexually aroused, which he's likely to do because he relaxes
9 and he's disinhibited when he's drunk, and if he's in the
12:12 10 presence of a vulnerable female, he will have serious
11 difficulty refraining from committing a sexual assault, and you
12 don't need the presence of a paraphilia in order to make that
13 happen. I think those are the conditions that create this
14 perfect storm in which that behavior is likely to happen.

12:12 15 Q. Excuse me. Just to wrap up all of your testimony here.
16 Have you formed opinion to a reasonable degree of medical
17 certainty as to whether Mr. Charboneau is a sexually dangerous
18 person under the Adam Walsh Act?

19 A. Yes.

12:12 20 Q. What is that opinion?

21 A. I believe he is sexually dangerous.

22 MR. ANDERSON: Nothing further, Your Honor.

23 THE COURT: Cross-examination?

24 CROSS-EXAMINATION

12:12 25 BY MS. MAHAN:

G. Zinik - Cross-Examination

12:12 1 Q. Good afternoon.

2 A. Good afternoon.

3 Q. My name is Halerie Mahan. I'm going to ask you a couple
4 quick questions.

12:12 5 You just testified that Mr. Charboneau does not suffer
6 from a paraphilic disorder, correct?

7 A. Yes.

8 Q. And you have not diagnosed him with any sexual disorder in
9 this case, correct?

12:13 10 A. Correct.

11 Q. You talked about Mr. Charboneau having four victims,
12 right?

13 A. Yes.

14 Q. And one of those was an offense that you referenced in
12:13 15 1987, correct?

16 A. Yes.

17 Q. And I believe that that is in your report, on page 5 of
18 your report, Bates 1647. You're aware that there is no
19 evidence that Mr. Charboneau was convicted of the crime charged
12:13 20 in that case, correct?

21 A. Correct.

22 Q. You diagnosed him with alcohol use disorder, right?

23 A. Yes.

24 Q. And you were just discussing that he has many different
12:13 25 convictions for crimes involving alcohol, right?

G. Zinik - Cross-Examination

12:13 1 A. Yes.

2 Q. You said, in fact, many of those crimes are not sexual in
3 nature, correct?

4 A. Correct.

12:14 5 Q. And I believe, in fact, you testified during your
6 deposition that the nonsexual offenses far outnumber the sexual
7 offenses, correct?

8 A. Correct.

9 Q. And some of those offenses are things like public
12:14 10 intoxication, correct?

11 A. Yes.

12 Q. And disorderly conduct, correct?

13 A. Correct.

14 Q. And assault, correct?

12:14 15 A. Pardon?

16 Q. And assault, correct?

17 A. There was one assault offense, to my knowledge.

18 Q. Did you get a chance to look at Dr. North's report in this
19 case?

12:14 20 A. Yes.

21 Q. If you could, please, turn to Government's Exhibit 3,
22 pages 1622 and 1623.

23 A. Okay. What page?

24 Q. It's pages 10 and 11.

12:14 25 A. All right. Thank you. Got it.

G. Zinik - Cross-Examination

12:14 1 Q. The sixth offense up from the bottom, that's an assault,
2 correct?

3 A. Yes.

4 Q. In 1982?

12:15 5 A. Yes.

6 Q. And three down from that is an assault and battery in
7 1985, correct?

8 A. Yes.

9 Q. In fact, just above the assault he has a conviction for
12:15 10 petit larceny in 1982 also, correct?

11 A. Yes.

12 Q. Now, you said that you were surprised that he didn't have
13 any violent behavior towards men, correct, in his record?

14 A. I said that men with alcohol problems and alcohol use
12:15 15 disorders, when they get aggressive, they often get assaultive
16 and get in fights with other men, and I must have somehow
17 missed this other assault in 1982. I was only aware of the one
18 in '85. And again, we don't know who the victims of those
19 crimes are, if they are men or women.

12:15 20 Q. And we, in fact, don't know if they were violent, correct?

21 A. Well, if they're labeled assault and assault and battery,
22 I would assume that involves some physical violence.

23 Q. Now, you interviewed Mr. Charboneau, right?

24 A. Yes.

12:16 25 Q. And you testified I believe that he has difficulty with

G. Zinik - Cross-Examination

12:16 1 language expression, right?

2 A. Yes.

3 Q. And open-ended questions cause him difficulty?

4 A. Yes.

12:16 5 Q. And that he can be difficult to understand when he
6 responds to questions like that?

7 A. Correct.

8 Q. I believe you might have, in fact, used the word
9 "nonsensical" to describe his answers, right?

12:16 10 A. I think sometimes his language becomes so confusing and
11 incoherent, yes, it's kind of -- you can't make sense out of
12 it.

13 Q. And you experienced that during your interview, right?

14 A. Yes.

12:16 15 Q. You would agree, wouldn't you, that there is no evidence
16 that Mr. Charboneau has engaged in sexually violent behavior
17 and child molestation when he's sober, right?

18 A. Correct.

19 Q. He's been in custody continuously for the last 13 years?

12:17 20 A. Yes.

21 Q. With no evidence that he has any incident reports relating
22 to sexual behavior?

23 A. Correct.

24 Q. And no evidence that he has any incident reports relating
12:17 25 to alcohol use, correct?

G. Zinik - Redirect Examination

12:17 1 A. Correct.

2 Q. In fact, there's no evidence that he has had difficulty
3 remaining sober while in custody, correct?

4 A. Correct.

12:17 5 MS. MAHAN: No further questions.

6 THE COURT: Thank you, Ms. Mahan.

7 Anything else, Mr. Anderson?

8 MR. ANDERSON: Briefly.

9 REDIRECT EXAMINATION

12:17 10 BY MR. ANDERSON:

11 Q. Dr. Zinik, you were talking with Ms. Mahan about the 1987
12 events. As you noted, Mr. Charboneau was never adjudicated for
13 that offense, right?

14 A. Yes.

12:17 15 Q. Turn to his deposition please, that's Government's Exhibit
16 No. 21.

17 A. Okay.

18 Q. And specifically to page 60.

19 A. Okay.

12:17 20 Q. On page 60, specifically starting on line 10.

21 A. All right.

22 Q. Do you see where the question was talking about the 1987
23 offense. That he -- "You forced your way inside a home without
24 permission and there was a woman there."

12:18 25 Do you see that?

G. Zinik - Redirect Examination

12:18 1 A. Yes.

2 Q. And his answer was?

3 A. "Yes." His answer was "yes."

4 Q. Do you see right below that he doesn't exactly remember
12:18 5 what happened?

6 A. Correct.

7 Q. But at the very -- at the bottom, starting on line 23,
8 "Were you drinking at the time?" -- is the question -- "Is that
9 why you don't remember?" -- is the question. What's the
12:18 10 answer?

11 A. "Yes."

12 Q. You also talked about with Ms. Mahan that there's no
13 evidence that Mr. Charboneau, since he was incarcerated in
14 2003, that he has offended sexually in prison, right?

12:18 15 A. Correct.

16 Q. Or that he has had alcohol in prison?

17 A. Correct.

18 Q. And that's about a 13-year time period roughly?

19 A. Yes.

12:18 20 Q. Mr. Charboneau was also incarcerated from 1988 to 2000,
21 right?

22 A. Yes.

23 Q. A 12-year period?

24 A. Right.

12:19 25 Q. Was there any evidence that he acted out sexually in

12:19 1 prison?

2 A. None.

3 Q. Was there any evidence that he drank in prison?

4 A. None.

12:19 5 Q. What happened when he was released?

6 A. He re-offended and committed another sexual assault in
7 2003.

8 Q. Was he intoxicated when he committed that assault?

9 A. Yes, he was.

12:19 10 Q. Was he on supervision when he committed that assault?

11 A. Yes.

12 MR. ANDERSON: Nothing further, Your Honor.

13 THE COURT: Anything else, Ms. Mahan?

14 MS. SHEA: No, Your Honor.

12:19 15 THE COURT: Thank you, Doctor. Watch your step
16 stepping down.

17 Does the Government have any other witnesses?

18 MR. JAMES: No, Your Honor. That is the Government's
19 case.

12:19 20 THE COURT: Is the Respondent, is it just going to be
21 Dr. Plaud?

22 MS. SHEA: Your Honor, we'd like to talk with our
23 client about whether he would like to testify on his own
24 behalf. Other than that, it is Dr. Plaud.

12:19 25 THE COURT: I'm just trying to get a sense of time.

12:20 1 Do you think the totality of Dr. Plaud's testimony will be
2 about an hour?

3 MS. SHEA: I hope so, Your Honor.

4 THE COURT: I know you don't have much control over
12:20 5 that.

6 MR. JAMES: No one does.

7 THE COURT: Nor does Mr. James.

8 Okay. To keep things moving, we'll take a 20-minute
9 break and then I think when we come back we'll do our best to
12:20 10 get through the witnesses. I have another matter from 3:00 to
11 4:00. And so if we finish by 3:00, that's fine. If we finish
12 with the evidence and then I need to do this other thing from
13 3:00 to 4:00 and then I hear closings, that's fine; but that's
14 kind of the schedule I'm working on.

12:20 15 So let's take a 20-minute recess.

16 (The proceedings were recessed at 12:20 p.m. and reconvened
17 at 12:40 p.m.)

18 THE COURT: The Respondent may call its first
19 witness.

12:42 20 MS. SHEA: Thank you, Your Honor. At this time we
21 would call Blake Charboneau.

22
23
24
12:42 25 BLAKE CHARBONEAU,

B. Charboneau - Direct Examination

12:42 1 having been duly sworn, testified as follows:

2 THE COURT: Good afternoon, Mr. Charboneau. Ms. Shea
3 is going to have some questions for you and then Mr. James is
4 going to have some questions for you.

12:43 5 You can adjust that microphone. If you pull it
6 closer, we'll be able to hear you.

7 You may examine the witness.

8 MS. SHEA: Thank you, Your Honor.

9 DIRECT EXAMINATION

12:43 10 BY MS. SHEA:

11 Q. Good afternoon, Mr. Charboneau. Can you hear me okay?

12 A. Yes.

13 Q. Are you feeling a little nervous today?

14 A. Yes.

12:43 15 Q. Why do you feel nervous?

16 A. I just feel -- I'm scared, you know, I'm scared.

17 Q. Do you ever have trouble expressing how you feel and
18 saying what you feel?

19 A. Yes.

12:43 20 Q. What do you mean by that?

21 A. I get emotional and sad. I feel guilty for the things
22 I've done.

23 Q. Do you ever have trouble with people understanding what
24 you mean when you say things?

12:43 25 A. Yes, I do.

B. Charboneau - Direct Examination

12:43 1 Q. How old are you, Mr. Charboneau?

2 A. Fifty-seven.

3 Q. Where are you from?

4 A. North Dakota.

12:43 5 Q. How many brothers and sisters do you have?

6 A. Five sisters, seven brothers.

7 Q. Did you grow up on a reservation?

8 A. Yes.

9 Q. How far did you go in school?

12:44 10 A. Eighth grade.

11 Q. Did you have trouble in school?

12 A. Yes.

13 Q. What is your faith, your religion?

14 A. Catholic.

12:44 15 Q. Was there a Catholic church on your reservation?

16 A. Yes.

17 Q. Are you still Catholic?

18 A. Yes.

19 Q. And do you attend a weekly men's Bible study in the BOP?

12:44 20 A. Yes, I do.

21 Q. Why do you go there?

22 A. I just want to feel better inside, understand where I've

23 been.

24 Q. Does anyone make you go to that?

12:44 25 A. No.

B. Charboneau - Direct Examination

12:44 1 Q. Do you go on your own?

2 A. Yes.

3 Q. We're going to talk a little bit about your sex offense
4 history, now. When you look back at your sex offenses, how
12:44 5 does that make you feel?

6 A. Very disturbed and very angry for what I've done.

7 Q. Are you denying that you have committed acts of sexual
8 violence in the past?

9 A. No, I don't. No, I don't.

12:44 10 Q. Do you admit that you've committed sexually violent acts
11 in the past?

12 A. Yes.

13 Q. Were you under the influence of alcohol during all of your
14 past offenses?

12:45 15 A. Yes, I was.

16 Q. Why do you feel badly about your sex offenses?

17 A. Because I know I shouldn't have been drinking or allowed
18 myself been drinking.

19 Q. Are you also sad because of anything that might have
12:45 20 happened to the victims?

21 MR. JAMES: Objection.

22 THE WITNESS: Yes, I do.

23 THE COURT: Overruled.

24 THE WITNESS: Yes, I do. I feel very disturbed of
12:45 25 what I've done in a very emotional way.

B. Charboneau - Direct Examination

MR. JAMES: Your Honor, could I ask the witness --
would you instruct the witness to put the mic a little bit
closer to him.

THE COURT: Just speak into that a little more.

That's better. Just lean in.

BY MS. SHEA:

Q. Have you been arrested for other crimes that are not sex
crimes?

A. Yes.

Q. Were you drinking during most of those other offenses as
well?

A. Yes.

Q. Have you ever committed a sex offense while you were not
drinking?

A. No.

Q. While you were sober, have you ever even had the desire to
commit a sex offense?

A. No.

Q. While you were sober, have you ever fantasized or dreamed
about committing a sex offense?

A. No.

Q. Have you been locked up for 13 years?

A. Yes.

Q. During the last 13 years, have you ever consumed alcohol
in prison?

B. Charboneau - Direct Examination

12:46 1 A. No.

2 Q. Is this the longest time that you've been sober in your

3 adult life?

4 A. Yes.

12:46 5 Q. Are you aware that alcohol does exist in prison?

6 A. Yes.

7 Q. Have you ever tried to make it?

8 A. No.

9 Q. Have you ever tried to buy it?

12:46 10 A. No.

11 Q. Have you ever asked another inmate for access to it?

12 A. No.

13 Q. Do you go to AA?

14 A. Yes.

12:47 15 Q. And how often does that meet?

16 A. Once a week.

17 Q. And when did you start going?

18 A. Probably about a month or so after I got there.

19 Q. Was that a month or so after you got to the Maryland unit?

12:47 20 A. Yes.

21 Q. Why did you start going there?

22 A. Because I know I was powerless over alcohol.

23 Q. Can you say that again?

24 A. Powerless over alcohol.

12:47 25 Q. Does anyone make you go?

B. Charboneau - Direct Examination

12:47 1 A. No.

2 Q. Did Dr. Holden recommend you to go?

3 A. No.

4 Q. Mr. Charboneau, do you believe that you have a problem

12:47 5 with alcohol?

6 A. Yes, I do.

7 Q. If you were released, will you have another drink of

8 alcohol?

9 A. No, I will not.

12:47 10 Q. Why won't you?

11 A. Because I promise I won't. I promise that I won't.

12 Q. How can you be sure that you're going to follow through

13 with that?

14 A. Because I don't want to hurt another individual. I don't

12:48 15 want to cause no more harm. I'm ashamed of what I've done

16 already.

17 Q. Now, since you've been locked up you've had one infraction

18 for violating the rules. What happened there? Why did you get

19 that infraction?

12:48 20 A. Excuse me? Can you repeat?

21 Q. Sure. Since you've been in the BOP, you had one

22 infraction for violating the rules for being late. What

23 happened there?

24 A. I was -- I was at the rec yard and I went out there too

12:48 25 early and I was in the wrong area.

B. Charboneau - Direct Examination

12:48 1 Q. In that situation did you mean to break the rule?

2 A. No. They called out for rec and they didn't say nothing

3 else, but called out for rec, that was it.

4 Q. Have you had a job in the BOP?

12:49 5 A. Yes.

6 Q. What is your job?

7 A. My job here is an orderly, helping officers, being

8 acquainted with people.

9 Q. Do you enjoy having your job?

12:49 10 A. Yes, I do.

11 Q. When you are out in the community this last time, did you

12 work as a dishwasher?

13 A. Yes, I did.

14 Q. And do you remember how long you had that job?

12:49 15 A. About almost two-and-a-half years.

16 Q. Did you enjoy that job as well?

17 A. Yes, I did.

18 Q. Now, you've joined the Commitment and Treatment Program at

19 Butner, CTP. Why did you join that program?

12:49 20 A. Because I felt guilty of things I shouldn't have done.

21 Q. Dr. Holden mentioned in one of her treatment notes that

22 you told her that you were a sexually dangerous person. Do you

23 think that you're a sexually dangerous person?

24 A. No, I don't.

12:50 25 Q. Do you know what that means?

B. Charboneau - Cross-Examination

12:50 1 A. Yes, attempt to rape and violent to other persons.

2 Q. Mr. Charboneau, if you are released, will you have another
3 drink for the rest of your life?

4 A. No, I will not.

12:50 5 Q. Will you rape anyone else for the rest of your life?

6 A. No.

7 MS. SHEA: Judge, I don't have any other questions.

8 THE COURT: Thank you.

9 Cross-examination.

12:50 10 CROSS-EXAMINATION

11 BY MR. JAMES:

12 Q. Good afternoon, sir.

13 A. Good afternoon.

14 Q. All right. If anything I say is unclear, I'll be happy to
12:50 15 repeat it. Okay?

16 A. Yes.

17 Q. All right. Mr. Charboneau, you testified that you have
18 committed these sexual offenses?

19 A. Yes.

12:50 20 Q. And that would include the 1987 sexual offense, August,
21 1987?

22 A. Yes.

23 Q. And so you forced your way into that woman's home; is that
24 correct?

12:51 25 A. Yes.

B. Charboneau - Cross-Examination

12:51 1 Q. And you removed the woman's clothing?

2 A. Yes.

3 Q. And you unbuttoned your pants?

4 A. Yes.

12:51 5 Q. And you tried to have sex with this woman on the kitchen
6 floor?

7 A. Yes.

8 Q. And you were drinking at the time, right?

9 A. Yes.

12:51 10 Q. Now, as you sit there before this Judge you're under oath,
11 you realize that, right?

12 A. Yes, I know.

13 Q. And you swore to tell the truth?

14 A. Yes, I did.

12:51 15 Q. Now, you were deposed in this case. In other words, you
16 recall myself and Mr. Anderson, we traveled to Butner to talk
17 to you and there was a person who was a reporter there?

18 A. Yes, I remember.

19 Q. And that was on Monday, February 29th, 2016, around that
12:52 20 time, do you recall that?

21 A. Yes, I do.

22 Q. And that is Government's Exhibit No. 21. Let me direct
23 your attention to that book in front of you. If you go to
24 page 60 in that book.

12:52 25 A. I need glasses to see.

B. Charboneau - Cross-Examination

12:52 1 MR. JAMES: Do you have his glasses?

2 MS. SHEA: No.

3 BY MR. JAMES:

4 Q. I will read to you what the question was and what your
12:52 5 responses were. All right?

6 A. Again, please? I couldn't hear.

7 Q. I'll repeat it. I know you were needing assistance. I
8 will read to you the questions that I asked you and what your
9 responses were, okay?

12:52 10 A. Yes.

11 Q. Now, you were under oath at that deposition. In other
12 words, you remember the lady that was there who was taking
13 everything down, she swore you in to tell the truth?

14 A. Yes, I do.

12:52 15 Q. Just like you were sworn in to tell the truth here today.

16 A. Yes.

17 Q. All right. Now, in February of 2016, and this is for the
18 record, page 60, line 10: "Now, in 1987, in August of '87, you
19 forced your way inside a home without permission and there was
12:53 20 a woman there?"

21 And your answer was: "Yes."

22 Do you recall that?

23 A. Yes, I do.

24 Q. The next question at line 14: "And you forced that woman
12:53 25 to remove her clothing?"

B. Charboneau - Cross-Examination

12:53 1 Your answer: "I, I don't remember."

2 Then line 17: "Okay. You remember unbuttoning your

3 pants, though, right?"

4 A. Yes.

12:53 5 Q. At line 19, your answer in February of 2016 while you were

6 under oath was: "No, I don't."

7 Line 20, question: "You tried to have sex with this woman

8 on the kitchen floor?"

9 Line 22, answer: "I don't remember."

12:53 10 And then at line 23, question: "Were you drinking at the

11 time? Is that why you don't remember?"

12 And your answer then at line 25 was "yes."

13 Now, you're testifying here today that you committed all

14 these offenses. So tell me, how did you remember -- did your

12:54 15 remembrance come about between February 2016 and today as

16 you're sitting in court before the Judge?

17 A. Because I had a lot of time to think about what I was

18 thinking doing wrong.

19 Q. So what you're saying is you weren't truthful then, but

12:54 20 you're truthful now?

21 A. I was truthful. Some of it I couldn't remember. I was

22 truthful.

23 Q. You are in the CTP program and you're only in Stage 2 of

24 the program; isn't that correct?

12:54 25 A. Yes.

B. Charboneau - Cross-Examination

12:54 1 Q. All right. So you have the orientation stage and now
2 you're at the very beginning stages of -- under Stage 2?
3 A. Yes.
4 Q. So you have a long way to go in that program; is that
12:54 5 correct?
6 A. That is correct.
7 Q. And do you believe that program is helping you?
8 A. Yes, it is.
9 Q. On direct examination you said you got as far as eighth
12:55 10 grade in school, and I'm paraphrasing here, but I believe you
11 stated you didn't do well in school?
12 A. Yes.
13 Q. There was a point in which you were actually doing well
14 until you began using inhalants; isn't that correct?
12:55 15 A. Yes.
16 Q. In your offense history, your offense history is all
17 alcohol-based; is that correct?
18 A. Yes.
19 Q. Whether it's general crimes or sexual crimes, it's
12:55 20 alcohol-based?
21 A. Yes.
22 Q. In fact, when you drink alcohol you lose control; isn't
23 that correct?
24 A. Yes.
12:56 25 Q. And as the record shows, you lost control, you thought you

B. Charboneau - Cross-Examination

12:56 1 lost control when you raped your daughter, right?

2 A. Yes.

3 Q. You lost control when you committed all these other sexual
4 crimes; isn't that correct?

12:56 5 A. Yes.

6 Q. And the bulk of your other nonsexual alcohol-related
7 crimes are kind of like public intoxication-type crimes; isn't
8 that correct?

9 A. Yes.

12:56 10 Q. In other words, you were in public, whether daylight or
11 nighttime, and you were observed by someone drinking?

12 A. Yes.

13 Q. And actually in a manner that was unlawful, right?

14 A. Yes.

12:56 15 Q. Then the police were called and then you were arrested,
16 right?

17 A. Yes.

18 Q. Now, with regard to your sexual crimes, these are crimes
19 that you committed, with the exception of your daughter, inside
12:56 20 someone's home, right?

21 A. Yes.

22 Q. A place they were staying; is that correct?

23 A. That is correct.

24 Q. All right. Now, on direct examination you said you've
12:57 25 been sober the last 13 years because -- while you were in

B. Charboneau - Cross-Examination

12:57 1 prison?

2 A. Yes.

3 Q. It's true, is it not, in your offense history you usually
4 don't act out in prison at all; isn't that correct?

12:57 5 A. Yes.

6 Q. In fact, in '82 you were known -- and that was after your
7 first offense -- you were known as a model prisoner, right?

8 A. Yes.

9 Q. And once you were released back in the community, you
12:57 10 began drinking again, right?

11 A. Yes.

12 Q. And in fact, you were brought back to the -- you were
13 brought back to the facility because of your alcohol abuse,
14 right?

12:58 15 A. Yes.

16 Q. And it's clear in your record that once you've been
17 released into the community and not supervised, you have
18 offended, generally and specifically sexually; isn't that
19 correct?

12:58 20 A. Yes.

21 Q. In fact, when you were -- the last offense in 2003, you
22 had progressed well enough that they placed you in your own
23 apartment, right?

24 A. Yes.

12:58 25 Q. And you drank?

B. Charboneau - Cross-Examination

12:58 1 A. Yes.

2 Q. And then you were going to get a roommate?

3 A. Yes.

4 Q. They wanted to give you a roommate or move you in with

12:58 5 someone, they wanted someone to be with you, right?

6 A. That's correct.

7 Q. And you never got that roommate because I believe about 10

8 days later that's when you committed the sexual offense that

9 has brought you here today, right?

12:58 10 A. Yes.

11 Q. You were also on supervision; isn't that correct?

12 A. Yes, I was.

13 Q. And in fact, the day you committed the sexual offense you

14 went to your probation officer that tested you to make sure you

12:59 15 weren't using alcohol; isn't that right?

16 A. Yes.

17 Q. And you passed that test, right?

18 A. Yes, I did.

19 Q. And that very same day you then committed a sexual

12:59 20 offense, right?

21 A. Yes.

22 Q. And in that sexual offense, it was due to your consumption

23 of alcohol?

24 A. Yes, it was.

12:59 25 Q. Which caused you to lose control?

B. Charboneau - Cross-Examination

12:59 1 A. Yes.

2 Q. And in fact, while you're out in the community, at the
3 time you were also in sex offender treatment, weren't you, in
4 2003?

12:59 5 A. I was -- I didn't hear the word.

6 Q. I'll repeat it.

7 In 2003, prior to your being arrested because of the
8 sexual offense, during that period of time you were in sex
9 offender treatment; isn't that correct?

13:00 10 A. Yes.

11 Q. With Dr., I think it's Fiferman?

12 A. Yes, it was.

13 Q. But you were not satisfied with Dr. Fiferman, in fact, you
14 had intended to stop going to sex offender treatment; isn't
13:00 15 that correct?

16 A. I would say yes. Up to my three-year period, yes, I
17 wasn't into it.

18 Q. All right. And until, I guess you testified about this
19 today, you had denied that you had an alcohol problem; isn't
13:00 20 that correct?

21 A. Yes.

22 Q. You denied it to Dr. North, right?

23 A. Yes, I did.

24 Q. You denied it to Dr. Zinik?

13:00 25 A. Yes, I did.

B. Charboneau - Redirect Examination

13:00 1 Q. And you denied it while you've been in treatment --

2 A. Yes, I have.

3 Q. -- at CTP?

4 A. Yes.

13:01 5 MR. JAMES: Can I have a moment, Judge?

6 THE COURT: You may.

7 (Counsel conferring.)

8 MR. JAMES: No further questions, Your Honor.

9 THE COURT: Thank you, Mr. James.

13:01 10 Ms. Shea, anything else?

11 MS. SHEA: Thank you, Judge.

12 REDIRECT EXAMINATION

13 BY MS. SHEA:

14 Q. Mr. Charboneau, why have you denied in the past that
13:01 15 you've had a problem with alcohol?

16 A. Because I just scared of being abused by it, you know, the
17 way I -- I couldn't handle it, I was scared of it and didn't
18 want to be associated with it. I was scared. I was scared of
19 being around. I was just really scared of alcohol. I really
13:01 20 didn't care for it. I felt like being left alone, I wanted to
21 be left alone. I didn't want to use it. I didn't -- I really
22 don't have the right quick answer. I'm scared of alcohol.

23 Q. And if you're released, are you going to be able to stay
24 away from alcohol?

13:02 25 A. Yes, I can. I can promise you that, yes.

13:02 1 MS. SHEA: Thank you, Your Honor. No other
2 questions.

3 THE COURT: Anything else?

4 MR. JAMES: No, Judge.

13:02 5 THE COURT: Thank you, Mr. Charboneau. Please watch
6 your step stepping down, sir.

7 Ms. Shea, you may call your next witness.

8 MS. SHEA: Thank you, Your Honor. At this time we
9 will call Dr. Joseph Plaud.

13:02 10
11 JOSEPH JULIAN PLAUD, Ph.D
12 having been duly sworn, testified as follows:

13 THE WITNESS: Good afternoon, Judge.

14 THE COURT: Good afternoon, Dr. Plaud.

13:03 15 I want the record to be clear that my comments about
16 the lawyers not being able to control you reflects on your
17 independence, which I admire.

18 MS. SHEA: And pursuant to the order entered at the
19 start of the trial, we would ask that he be allowed to testify
13:03 20 as an expert.

21 THE COURT: He absolutely is testifying as an expert.

22 MS. SHEA: Thank you, Your Honor.

23 THE COURT: As soon as you indicate to Ms. Shea you
24 are ready, she may ask you questions.

13:04 25 THE WITNESS: Thank you, Your Honor.

J. Plaud - Direct Examination

DIRECT EXAMINATION

BY MS. SHEA:

Q. Good afternoon, Dr. Plaud.

A. Good afternoon.

Q. You were asked to conduct an evaluation in this case. Did you form an opinion as to whether or not Mr. Charboneau meets the criteria to be a sexually dangerous person?

A. I did.

Q. What is your opinion?

A. It's my opinion that he is not a sexually dangerous person.

Q. Why do you believe that he is not a sexually dangerous person?

A. Well, first of all, if we look at it through the three tiers of analysis, as we do in these cases, it's clear that he meets Tier 1, I'm in the affirmative on that.

Regarding Tier 2, concerning whether Mr. Charboneau has a serious mental illness, abnormality or disorder, there's a bunch of experts here, usually four against one as usual, but I'll do my best, we basically agree diagnostically. I mean, there is some extraneous diagnoses, but not really important ones. On the main issue in terms of substance use disorder pertaining most centrally to alcohol as well as more historical inhalants, but it's really the alcohol that we're here to analyze, debate, discuss, figure out. So we're all pretty much

J. Plaud - Direct Examination

13:05 1 diagnostically in sync in this case.

2 The question is whether that diagnosis, absent a
3 significant personality disorder such, for example, as an
4 antisocial personality disorder, absent a primary paraphilia,
13:05 5 such as sexual sadism or pedophilia or pedophilia disorder, or
6 something in that nature, in and of itself is that sufficient
7 to make a professional conclusion as to whether or not in the
8 present tense some -- the individual with that diagnosis,
9 absent those other co-morbid diagnoses, would have serious
13:06 10 difficulty in the present tense in refraining from further acts
11 of child molestation or sexually violent conduct, and that's
12 where the analysis in this case breaks; it drops.

13 In my professional judgment, Judge, Mr. Charboneau's
14 substance abuse disorder does not, cannot, in this case,
13:06 15 suffice as a major mental illness, abnormality or disorder that
16 we can reliably conclude at this time cause him to have serious
17 difficulty in refraining.

18 And really, if you think about it, it's what I would call
19 a prognosticator's two-step, because not only, number one, you
13:06 20 have to be certain or fairly certain that he's going to relapse
21 with alcohol, and I certainly see there's an argument to be
22 made that he will given his history. And in my report I
23 certainly also say it's not beyond the bounds of possibility
24 that he might relapse. So I'm not really even taking the
13:07 25 analysis there, but it is important, step one, you have to make

J. Plaud - Direct Examination

13:07 1 that assumption first because there is no evidence in his
2 history ever, no accusation, no admission, no expert here has
3 drawn attention to the fact that when he has been sober in his
4 past that he has committed or attempted to commit any acts of
13:07 5 sexual violence or child molestation. So we have to make that
6 first leap.

7 Then we have to then jump from that to another, and that
8 is, if he does relapse with alcohol, he will then have serious
9 difficulty in refraining.

13:07 10 So now -- it's kind of like, to put it in more legal
11 jargon, it's double hearsay in that sense. It's another step
12 of analysis, when the first isn't certain and the second
13 clearly isn't certain, because even though Mr. Charboneau in
14 his history, by his own admission, and I would agree by my
13:08 15 reading of the records, my discussion with him during the
16 clinical interview that I had with him, alcohol has been a
17 disinhibitor for him sexually in the past. But that doesn't
18 mean it fuels deviant sexual arousal.

19 I mean, I heard earlier testimony today, kind of getting
13:08 20 at that I think Dr. Zinik was testifying to the effect that,
21 you know, he reported to him during the interview that when he
22 drank alcohol it affected his sexual arousal as well. Well,
23 that's not abnormal. I would remind you, let's go back to
24 Shakespeare and MacBeth, Act II, Scene III, where Shakespeare
13:09 25 writes about alcohol and sexual arousal. He said it provokes

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13:09 1 the desire, but it takes away from the performance. So it's
2 clear throughout our history alcohol has an impact on our
3 sexual arousal. That's not abnormal or deviant.

4 The question is: If he drinks and relapses, will it
13:09 5 automatically be assumed that he can't control himself, his
6 volitional capacity over sex. And it's too tenuous a
7 relationship given the absence of any other deviant arousal
8 driving him or personality disorder that would be associated
9 with sexual recidivism. So that is the main issue I think in
13:09 10 this case. We're way, way out on a branch that I don't think
11 has -- you can say with clear and convincing analysis that he
12 would have serious difficulty in refraining.

13 I would also add to that, you know, I've heard a lot of
14 testimony -- I pretty much get to go last so I get to hear
13:10 15 everything before I get up here -- but it is clear that
16 Mr. Charboneau starting as a relatively young man started
17 abusing substances. It looks like inhalants was his way in and
18 then alcohol took over from there. It looked like he was
19 basically a good student before then. He was not a behavioral
13:10 20 problem in the records before then. But then alcohol enters
21 his life and it had -- it's had many negative effects on others
22 and himself throughout much of his adulthood when he was in the
23 community. We all agree with that.

24 We all also agree, too, that he does have a significant
13:10 25 history in the community of drinking. If -- and he has

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13:10 1 committed sex offenses and other offenses while drinking.

2 But here's the thing: If there's a direct connection such
3 that it really meets the standard that I think the standard is
4 for sexual dangerousness, I would expect it to be a lot more
13:11 5 offending given the fact he was drinking all the time.

6 So let's look at his offenses. We have four documented
7 issues here: The first is when he's 22 years old. He's a kid.
8 That is against an extrafamilial person who he met earlier and
9 went to the -- she was house sitting and he went there.

13:11 10 Clearly, an act of rape. He doesn't remember it. I tend to
11 credit him. He probably doesn't remember a lot. I think it's
12 been fabricated a lot because he doesn't remember, but that's a
13 sexual violent act, okay, 22 years old.

14 Go up in time, some years go by and we are up to now
13:11 15 '87 and the incident that he was just asked about where there's
16 a level of confusion a bit, at least legally, because he wasn't
17 convicted of any sexual offense, it was like a public
18 intoxication offense, nonsexual. He told me during the
19 interview he didn't remember it. He didn't deny it, but he
13:12 20 didn't remember it. That's with another adult, several years
21 later and it's outside the family.

22 Then we come to 1988, which is with daughter and it's a
23 heinous act. Could he have lost control completely during that
24 time? Yeah, he probably did. There's another instance.

13:12 25 Then he goes to prison for about 12 years. He comes out,

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13:12 1 he's out in community and then we have the index, the federal
2 offense for which he has now served the last 13 years.

3 In my analysis -- and I haven't heard this come out in the
4 testimony, but again, I try to pay attention in real-time
13:12 5 what's going on, I like to see how it's being dealt with
6 legally, what's going on, what's the situation. This involves
7 his niece. This is a niece, from my reading of the record and
8 discussion with Mr. Charboneau, was his niece, but didn't
9 really know she was his niece until maybe six months or a year.

13:13 10 He was introduced to her, she's was an adult, she's in her
11 twenties. And according to Mr. Charboneau, he seems to have
12 the greatest recollection about things about this and we talked
13 about it for a while and it hasn't really come out here. But I
14 don't know, I wasn't there.

13:13 15 But here's what I can tell you. It seems to me that
16 offense, which is the most recent one, which is 13, 14 years
17 ago and involved alcohol, was not of the nature of the one like
18 when he was 22 years old. It seems to be, involved some type
19 of relationship that went around even being a family and
13:13 20 involved into some type of sexual relationship, okay?

21 And Mr. Charboneau told me that there was a lot going on,
22 we discussed a lot of things, that it was essentially, and
23 using his words, it was consensual, they had a relationship.

24 Now, I will remind everyone that his conviction in that
13:14 25 case was not for rape of any kind, it was for basically a

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13:14 1 statutory issue. It was sexual contact with a person incapable
2 of consent. To my reading, I'm not a lawyer, but I would think
3 that's more of a statutory issue of able consent. So I'm just
4 pointing that out. To my analysis, it's very different. Now
13:14 5 he's older, he's violating probation, he's abiding substances
6 and there's this indication that the offense that happens, that
7 is the most recent one takes place not as he's drinking out of
8 control and grabbing everyone like he has no volitional
9 capacity even while he's drinking, which is clear evidence by
13:14 10 his own admission and in the records that he was, but he
11 developed some type of relationship with someone that he comes
12 to understand is his niece and something goes wrong, okay?
13 That's 2003.

14 Now we're in 2017. There is no indication during this
13:15 15 period of time that Mr. Charboneau has gotten hooch, whatever
16 you call it in the federal parlance, even though it's -- I
17 mean, I read records all the time, it's not beyond the bounds
18 of human experience while you're incarcerated to do that. If
19 you are so dependent on it and if you can't control it, you can
13:15 20 get access to it. He has not. No indication.

21 And I think that there are other issues right now with
22 him, with his advanced age, with his struggle over the past 13
23 years to try to understand certain things that just when you
24 put it all together, are there risk factors involving alcohol?

13:16 25 Yes. Am I here to tell you it's impossible for him to

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13:16 1 re-offend if he gets drunk and gets out and goes to a bar and
2 gets out? No, I'm not saying that.

3 But I'm telling you that if you're asking me as a
4 professional, I can't do that two-step, I can't do that
13:16 5 prognosticator's two-step, it's a house built on a foundation
6 of sand, in this case. There's no sexual deviance. Even the
7 Government's experts don't say sexual deviance. There's no
8 real personality disorder.

9 I mean, we've heard some V codes being announced here by
13:16 10 Dr. Ross, which are not mental abnormalities and she said don't
11 really add to anything. You have the fact that he has a
12 history of alcohol abuse, and he has had episodes when he has
13 committed sex offenses while under the influence during his
14 lifetime beginning when he was in his early twenties.

13:16 15 I would expect -- I would be more comfortable if there
16 were many more victims as I see when alcohol plays more of a
17 role over the course of his life. And I do want to note the
18 little difference in the 2003 offense in my analysis of the
19 situation. I also want to note that he's 57 years old and you
13:17 20 can -- you say he skips rope for six days. I can't skip it for
21 two minutes, I imagine that must be a good thing, but age does
22 matter. I think it's taken him a little longer. I think it's
23 reasonable to assume he does have some type of neurocognitive
24 issues going on. I mention it a little bit in my report. I
13:17 25 don't give a full diagnosis because I don't really have the

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13:17 1 neuropsychological data to back it up. But clearly in my
2 discussion with him, the things we were talking about in terms
3 of his verbal skills, ability to communicate, yeah, it was
4 difficult even for times with me. And I think the guy is an
13:17 5 anxious person and I think he wants to please you in a
6 situation. At times sitting up here just a few minutes ago
7 just saying yes, yes, yes, whatever. Were you involved in the
8 Kennedy assassination, he probably would have said yes. He's
9 just -- that's the way he is.

13:18 10 But I do not have any confidence as a professional to say
11 that I can guarantee you or be very certain, very likely
12 certain, that he is a 57-year-old man, with everything that has
13 been going on, with the fact he has 13 years, which is a long
14 time of sobriety, with no evidence that he has tried to get
13:18 15 that, that he has sought out at least some type of substance
16 abuse. You know, AA is AA. It's got its detractors; it's got
17 its advocates, but it's something. He's been involved in that.
18 He does have a term of supervised release that will extend to
19 when he's about 60 years old and that gets into an age range in
13:18 20 terms of sexual recidivism where almost nobody re-offends, even
21 when you have lots of offenses in the past. And that should
22 be -- so I -- you know, if this was just -- if we were here
23 having a court case about is Mr. Charboneau going to relapse
24 with alcohol? If this was an alcohol court or something, well,
13:19 25 I would say, you know what, I'd say, I would give him more

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13:19 1 credit than I would maybe 13, 14 years ago, but you know,
2 substance abuse is the devil and it's so hard to predict
3 because of the base rates, it's so hard to predict that someone
4 is not going to relapse. So I'll even concede that he may
13:19 5 relapse. But then to take that relapse and then go the next
6 level and pair that with volitional problems with a sexual
7 behavior, I can't do it based on the specifics of this case,
8 his current age, I think he's caught up a bit maturationally, I
9 think he does really feel badly about himself. And if you look
13:20 10 at the research, none of this has been discussed, we have to
11 discuss this, look at the research on using alcohol
12 specifically as a predictor of future offending. I'll go to
13 the largest and venerable database of Hanson and Bussiere, over
14 28,000 sex offender studies, one of the factors in their study
13:20 15 was alcohol abuse. Do you want to know what the correlation
16 with future sexual recidivism was in that meta-analysis? Zero.
17 In other words, a big egg. It had no ability in and of itself
18 to predict future re-offending. It's for the reasons that
19 cause me to step backward in this case.

13:20 20 So that's my analysis.

21 My analysis is: He does not really have a serious mental
22 illness, abnormality or disorder. He has a substance abuse
23 problem, and I cannot predict with any professional certainty
24 that even if he goes to step one and relapses with substances
13:21 25 that at this time is going to cause him to lack volitional

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13:21 1 capacity of sexual impulses. It's certainly possible, but it's
2 not a likely probability in my judgment given all the factors
3 that I've seen in this case.

4 Q. Thank you, Dr. Plaud.

13:21 5 You mentioned the 2003 offense being different in kind in
6 your mind.

7 A. Yes.

8 Q. Does it matter that the victim in that offense denied a
9 consensual sexual relationship?

13:21 10 A. I'm aware of that. And like I said, I'm not here to make
11 judgments in the sense of this happened and that happened. I
12 mean, I read -- read the reports, right? I read -- I read what
13 other reports the person said they did, you know, or during the
14 interview what they say. But then I also pay attention to the
13:22 15 legal disposition of the case. It's in real-time. Here we are
16 sitting 13, 14 years later. We don't have anybody here who is
17 involved directly in that case, except Mr. Charboneau's here.

18 So I have to -- the bottom line is he was convicted of
19 what I said he was convicted of. So I have to pay attention to
13:22 20 that. And if you look at the whole thing, I do believe it's a
21 little bit of a difference, especially when in 1982, it's
22 clearly a different issue, he was 22 years old then. So that's
23 what -- the best I can tell you.

24 I'm not -- you know, I wasn't there, but I have to pay
13:22 25 attention to everything, including, you know, the legal

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13:22 1 disposition helps to guide me because that's how it's being
2 dealt with in real-time in a criminal context.

3 Q. I want to ask you a few more questions about Prong 2 of
4 the Adam Wash Act. You heard Dr. Zinik diagnosed
13:23 5 Mr. Charboneau with a personality disorder.

6 A. Right.

7 Q. Why did you decline to offer that diagnosis?

8 A. Well, here's the situation. I did some testing of him as
9 well, it's at the end of my report, and actually, I picked up

13:23 10 on some of the things that I think the others specified
11 personality disorder, talking about schizotypal features,
12 schizoid, I forgot which was said, but I picked up some of that
13 on my testing too. The problem is the guy has been a substance
14 abuser so I think that is a better explainer. You know, we
13:23 15 talk about neurocognitive functioning and maybe some problems
16 with that. I think he confabulates; in other words, I don't
17 think he doesn't remember a lot because of the substance abuse
18 history, so he tries to fill in the gaps like a lot of
19 substance abusers do.

13:23 20 I think some of the -- his expressive vocabulary issues, I
21 think if you look at all those things, it really washes out
22 other specified personality disorder. You can make it, but I
23 don't think it's relevant in this case even if you did make it.

24 Q. You touched on this previously in your earlier answer;
13:24 25 that the other doctors diagnosed him with mild neurocognitive

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13:24 1 disorder.

2 A. Yeah.

3 Q. What do you make of that in terms of being relevant for
4 purposes of looking at Prong 2?

13:24 5 A. Okay. Well, what I think -- like I said earlier, I tend
6 to agree that he probably does. I just, like I said, didn't
7 have enough data. I think I heard Dr. Holden say he's being
8 referred for a neuro-psych evaluation. That would probably be
9 a good idea. But I do talk in my report that he probably has
13:24 10 something along those lines without making a diagnosis.

11 I think it affects his interpersonal functioning along a
12 number of different domains. There is two things that happened
13 that I read in the reports and heard him testify today that
14 kind of set me off a little bit, and I think it's related to
13:24 15 his interpersonal style, his verbal deficits, and maybe a
16 neurocognitive impairment of some sort. And that is this: You
17 know when you say, well, he admitted he was sexually
18 dangerous -- I remember this after I interviewed him and I
19 remember traveling here for a trial several months ago, I got
13:25 20 here and there was no trial because he was going to commit
21 himself. Well, I think that is an expression of the fact that
22 he is being told in his treatment right now, you heard
23 testimony this morning to that effect, that he has a sexual
24 deviance, and even that was used by -- Dr. Holden used that
13:25 25 term, he has a sexual deviance and kind of been told he's

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13:25 1 sexually dangerous and says, okay, I'm sexually dangerous.

2 Just like he said yes to everything that both sides asked him
3 here today.

4 So I think you have to be careful a little bit about that
13:25 5 and understanding because he said that, that I think that's how
6 he responds to social pressures, especially institutionally.
7 You know, he's not one who just is a defier, he's going to say
8 no, because you say this. He'll say, okay, am I? Okay, I am
9 then.

13:26 10 And I think -- I'm a little concerned with that, using
11 that to conclude, well, you know, he even admitted he was
12 sexually dangerous. Well, I don't think he really admitted he
13 was sexually dangerous. I know he denied it again here today,
14 but I think he was just kind of going with the treatment mode,
13:26 15 he got into treatment and was going along that mode. After
16 all, this is the Commitment and Treatment Program, these are
17 people who already committed are in the program eventually.
18 It's very rare for a guy in his stage to be in treatment. They
19 don't do it mostly because the lawyers say don't do it because,
13:26 20 you know what, they're going to come and testify against you
21 like you saw happening here this morning, that's why.

22 But he took it. He's taking it. And I think he is making
23 progress. That's great. But to say well, would it deprive him
24 of his -- you know, would it interfere with him, would it be a
13:27 25 stumbling block for him, this progress that he's making if he's

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13:27 1 not -- declared not sexually dangerous and leaves Butner.

2 Well, other experts would say, yeah, it would be a real
3 impediment to him, he's making such progress. It's easy for us
4 to say. Guess where I'm going tonight? It's restaurant week
13:27 5 in Raleigh. I'm going to have a good time tonight when I get
6 out of here. I'm free. It's easy for me to judge.

7 No. I think you have to make these determinations based
8 upon not convenience, oh, yeah, he's in a program, he seems to
9 be making process, it's a commitment program. He can get
13:27 10 outpatient treatment. He will have to get outpatient
11 treatment. He has a term of supervised release until he's
12 about 60.

13 So you know, these kinds of things, they just --

14 THE COURT: How do you think -- you know, talking
13:27 15 about the agreeability component of whether the term is
16 personality or whatever, how does that play in, do you think,
17 if he's released and he's with somebody who has a bottle of
18 whiskey, right? In terms of somebody that just says yes, just
19 like a person who is just agreeable and some companion that by
13:28 20 pure happenstance, not by design, but by pure happenstance,
21 hey, I got this, I'm drinking, do you want some, how do you
22 think that plays in on the concept of what you talked about,
23 the two-step on that first step?

24 THE WITNESS: I'm more willing to concede the first
13:28 25 step of the two step.

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13:28 1 THE COURT: I understand that. How do you think that
2 plays in? Do you think that's -- it's a risk issue, right?

3 THE WITNESS: It's a risk issue, Judge. It's a risk
4 issue.

13:28 5 The question is -- again, he's on -- he's going to be
6 on supervised release and you can't just say he stopped
7 maturing at age 12, I mean, come on. I could agree that he
8 certainly had issues going forward. I think he was -- you
9 know, there was certainly a developmental delay there going on,
13:29 10 but he's 57 now. He has 13 years, you know, and he seems to at
11 least have a commitment not to drink.

12 Now, is that sufficient? There's no magic bullet.
13 He may relapse. I would never, ever, ever say someone has very
14 little chance, someone with a history of alcohol like he had
13:29 15 that, no, he's not going to relapse. I'm sure he believes he
16 won't right now. I believe him when he says that. Do I think
17 that's reality? I don't know. I certainly hope he continues
18 with substance abuse treatment, and I would imagine his
19 probation officer is going to be very attuned into that for the
13:29 20 next couple of years, and I think if he can stay sober, and I
21 think there's an increasing chance that he can this time around
22 given his age and the fact he's been incarcerated for so long
23 without any indication that he has to have a drink, that I'm at
24 least more prepared to say I think there's a probability of
13:30 25 that.

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13:30 1 But like I said, even if he does take a drink, then
2 to go to the next level and say then he's going to lose his
3 ability to control himself sexually now. I don't know. That's
4 just not good.

13:30 5 BY MS. SHEA:

6 Q. Do you think that his neurocognitive issues make him more
7 likely to be sexually dangerous?

8 A. No.

9 Q. Why not?

13:30 10 A. I think that -- because what do they fuel? To say they
11 would make it more sexually dangerous, it would impact his
12 sexual functioning, sexual behavior, his sexual arousal in some
13 way, and there is no evidence of that.

14 Now, I think it manifests itself in ways that,
13:30 15 unfortunately, that he gets negative things attributed to him
16 because he can't articulate things and he can't remember things
17 and he can't function socially a lot of times that people would
18 have expectations for him to do. That's more of the issue.

19 Q. Do you think that alcohol use disorder can ever satisfy
13:31 20 Prong 2?

21 A. Well, I think it certainly can be a part of Prong 2, yes.
22 In and of itself -- like I said, if we had this case and we had
23 a history of sex offenses that truly were clustered, I mean, in
24 a way that there was a very, very direct relationship, very
13:31 25 direct, I mean, he drank, within a week he was committing an

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13:31 1 offense; he drank within a week he committed an offense, he
2 drank -- this guy, yeah, he's committed offenses, two with
3 family members, one when he was 22 in the house and some
4 question about the third, I think there was an attempt there,
13:31 5 at the very least, even though he wasn't convicted of it.
6 That's not the pattern I would expect if there was that direct
7 relation with alcohol.

8 But I would see substance abuse being --

9 THE COURT: If you had that fact, I realize those
13:32 10 aren't the facts, but if you had those, do you think you could
11 to a professional certainty opine on that or would that not
12 even be --

13 THE WITNESS: I think I could, Judge. Yes, I could.

14 But I'll tell you where substance abuse disorder
13:32 15 would play a more major role as a contributing factor of a
16 major mental illness. In other words, you pair that with a
17 paraphilia, all right, or a major personality disorder or both,
18 yes.

19 In and of itself, as we have here, given the
13:32 20 behavioral evidence we have going back to when he was 22 years
21 old, no.

22 BY MS. SHEA:

23 Q. If you were to consider alcohol abuse disorder sufficient
24 for Prong 2, would you also expect to see more struggle with
13:32 25 maintaining sobriety?

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13:33 1 A. I would. You mean institutionally or just --

2 Q. Both.

3 A. Yeah, I definitely would, yeah.

4 Q. Do you believe that nonsexually based disorders in general
13:33 5 can qualify for Prong 2?

6 THE COURT: What was your question, ma'am?

7 BY MS. SHEA:

8 Q. Do you believe that nonsexually based disorders alone can
9 qualify for Prong 2 even more on a macro level, just
13:33 10 non-paraphilias.

11 A. Well, the short answer is it depends. It's the same
12 argument I just gave for, you know, for alcohol abuse.

13 If somebody has some condition and it's linked directly,
14 repeatedly and sequentially to sexually inappropriate behavior,
13:33 15 illegal behavior, then, yeah, you can. But the farther afield
16 you get from that, the more difficult it is. Here we have to
17 make two leaps, so that's the best way I think to characterize
18 it.

19 Q. You noted in your report, which is our Exhibit 2. I'm on
13:34 20 page 2 of your report of our Exhibit 2. You noted that he has
21 excellent behavioral regulation and control.

22 A. Yes.

23 Q. What did you mean by this?

24 A. That means that -- I mean, we have 13 years now to look
13:34 25 back most recently -- and again, in these cases -- and I know

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13:34 1 he set up with supervised in past current level, you know, he's
2 12 years, he also had good -- I didn't see any real issues when
3 he was in prison before -- but the more important data, when
4 you do these kinds of cases and analysis time matters and the
13:35 5 farther you go back in time, the less predictive things are,
6 because this is about him today, it's not to re-punish him for
7 something he already did. It's to say he has a current
8 condition that causes him to do certain things.

9 So the farther you go back in time from where we are right
13:35 10 now, the more suspect generally the data gets. So when I look
11 back the last 13, 14, years, I saw one disciplinary report, I
12 pointed it out in my report, it was for a technicality, not
13 showing up for employment or something, absent from assignment.
14 That's it. He's not a sexual problem, he's not a general
13:35 15 behavioral problem, he's not getting into fights, he's not, you
16 know, trying to get alcohol, he's not trying to do anything
17 that's against institutional rules. So clearly, the guy has
18 controls. Clearly, the guy has the ability to regulate himself
19 sexually and more generally.

13:36 20 So then you get back into this kind of issue about, okay,
21 then he takes a drink and does it all go to pieces? Well, it
22 has gone to pieces at times, yeah, it has, but is this an
23 ongoing problem? In other words, is it a continuous problem?

24 I have taken a drink or two in my day, Judge, and there
13:36 25 were times that I have said or done things that I have not been

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13:36 1 too proud of. You know, you wake up the next day and I said, I
2 said what? I did what? I mean, it's not the way I generally
3 live my life. I have control. You can't let the exception
4 prove the rule.

13:36 5 I'm not trying to put light on anything here, but even
6 taken from its worse from age 23 to age 57, we have discrete
7 instances, two of whom were in the family. So he's not out
8 there when he's out there just getting drunk and grabbing
9 people or trying to assault people as a more general function
13:37 10 of lack of volitional capacity over sexual impulse. It's not
11 there.

12 Q. Now, Dr. Ross was asked some questions about the fact that
13 his victims were mostly family and she said that it didn't -- I
14 won't characterize what she said. She made some comments about
13:37 15 familial victims. Does that matter to you in this case?

16 A. Well, yeah, in a way, too, it speaks to issues of control.
17 Generally speaking, sex offenders with family victims tend to
18 be less likely to re-offend. Incest offenders throughout the
19 lifespan tend to be the lowest group of recidivists, but I
13:37 20 don't really consider him in the class with incest offenders,
21 I'm not even putting it that way, other than to note that he
22 has within the family victim.

23 Clearly, there is something going on there within the
24 context of his family environment that didn't but on one really
13:38 25 known occasion when he is 22 and something else five years

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13:38 1 later that we have some question about because we really don't
2 know what happened other than what I read and what the
3 disposition was and what he says and doesn't and does remember,
4 beyond that there is no instances of sexual assaulting during
13:38 5 that period, and the guy, from hearing the testimony today, I
6 think he was intoxicated a good percentage of that time.

7 Q. Did you consider that his criminal record contained many
8 offenses other than sex offenses related to alcohol?

9 A. Yes.

13:38 10 Q. Do you think that's significant at all?

11 A. I do. And I pointed that out I think on page 2 of my
12 report because it shows, you know, there were instances and
13 more instances where his alcohol use and intoxication resulted
14 in nonsexual criminal behavior than sexual criminal behavior.

13:39 15 Q. You mentioned a little bit about Dr. Holden's testimony.
16 Having heard her testimony today, has your opinion changed?

17 A. No. I mean, like all the other experts, you get to be an
18 expert echo chamber in here sometimes, not with me because I'm
19 usually all by myself. Here's the situation and this is kind
13:39 20 of a problem too. We talked I think early in the testimony
21 about the therapeutic alliance. That's important. I've been a
22 treatment provider for 30 years with sex offenders and good
23 luck with the therapeutic alliance now, when your therapist is
24 up there testifying against you. But you know, no, it didn't
13:39 25 change. I think he's at a point in his life where he

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13:39 1 recognizes. I don't think he can fill in all the gaps. I
2 don't think he's capable of filling in all the gaps. I think
3 he doesn't remember a lot of things. I think when you're
4 intoxicated as much as he is or was, I don't think he remembers
13:40 5 a lot of it. It's not atypical, and I think he at times will
6 say this is what I remember and it may differ from what it says
7 or I don't remember what it is.

8 But I think putting all of that on the table, I think he's
9 reached a point in his life, and I do think this is important,
13:40 10 yeah, I do want to continue to do the right thing. I think his
11 heart is in the right place here, and I think his
12 participation -- I don't remember the last client I had before
13 commitment who was in the CTP, none of them are. They don't
14 go -- they don't want to for the reasons here, number one. And
13:40 15 number two, to use treatment in a way in this case, it's kind
16 of like putting the cart before the horse here. He's not been
17 found dangerous yet. To say he's going to graduate from CTP
18 before -- let's take one step at a time here. I know the
19 statute itself talks about participation and treatment, it
13:41 20 doesn't talk particularly about the CTP and that's a treatment
21 program geared to people who are sexually dangerous. That's
22 the whole purpose for its existence.

23 THE COURT: What's your opinion about the treatment
24 that he had in that time period of 2000 to 2003?

13:41 25 THE WITNESS: From what I read, and I mentioned the

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13:41 1 therapists in my report as well, I don't think he was of the
2 mindset at that point that he would be benefiting from
3 treatment.

4 Again, going back in time, 13, 14, 17 years, but I
13:41 5 think his mindset is a bit different today than it was back
6 then from what I, you know, take from my interactions with him
7 and the records.

8 BY MS. SHEA:

9 Q. So the fact that he was out in the community on conditions
13:41 10 for three years and then re-offended, that doesn't change your
11 opinion?

12 A. No, it doesn't change my opinion. I'm aware of the
13 condition; but again, it was a period of time, number one, so
14 it wasn't like it was three weeks that he re-offended which
13:42 15 people with volitional incapacity you probably would think to
16 be the case. So it was a period of time.

17 And again, I want to go back to what I said earlier. I
18 think the offense itself was a bit different in its scope than
19 the earlier offending in the '80s.

13:42 20 Q. Do you think that it's significant that he was able to be
21 in the community for three years on conditions?

22 A. Yeah. I didn't make a big deal of it because he did
23 re-offend. Three years is a significant period of time. You
24 know, I would note that, yeah, but I didn't make a great big
13:42 25 deal of it in my analysis.

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13:42 1 Q. Does the fact that he has two years of supervised release
2 play into your opinion at all?

3 A. It does.

4 Q. Why?

13:42 5 A. Because I think he's on a course now, and I credit the CTP
6 program, I think, for helping him to understand certain things,
7 getting him to try to dedicate his life to living a good life.
8 And I think those goals, while you can say they could be
9 achieved at CTP, okay, well, maybe they can, but you know what,
13:43 10 he's also got to stay there.

11 So the question is, as a trained psychologist we learn
12 from step one, least restrictive alternatives; in other words,
13 the thing that guides me in my treatment planning and what I
14 recommend is how can a person derive the most of treatment from
13:43 15 the least restrictive environment. That's the ethical way to
16 analyze this situation.

17 If they can't and they need strict -- you know, I
18 testified people -- I think some people are dangerous and then
19 I'd say, no, CTP is the place to get the treatment. I don't
13:43 20 think so in this case. I think he's of a different mindset
21 now. I think he's going to be able to avail himself of
22 treatment he's required to get as a condition of his supervised
23 release, and I think that's a good thing.

24 Q. Is his voluntary attendance to AA significant to you at
13:44 25 all?

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13:44 1 A. It is. Again, as I said, there are different treatment
2 modalities for substance abuse. There is
3 institutionally-based, in my experience, there are very
4 intensive substance abuse treatment like sex offender

13:44 5 treatment, but it's geared -- they share certain things. We
6 talk about relapse prevention. The Good Lives Model, the way
7 it's practiced now in sex offender treatment it takes a turn
8 from a relapse prevention. Before the cognitive behavioral
9 approach that the CTP started, when it started and before the

13:44 10 SOP programs and all of these things, they are based on a
11 cognitive behavioral relapse prevention model, which means you
12 identify your risk factors, you integrate your risky situations
13 and you develop strategies in order to A, recognize what your
14 triggers are; and B, take action in real-time to lower your
13:45 15 risk by developing what we call interventions. That's what a
16 relapse prevention model is.

17 Good Lives integrate some of that, but it is, I think, as
18 testified earlier by Dr. Holden, she said it very well, you
19 know, emphasis has changed toward living the good life; in
13:45 20 other words, having the skills and identifying the positives
21 and trying to move toward that. But it doesn't abandon the
22 principles of relapse prevention, but relapse prevention was
23 stolen from substance abuse. That's really where it came from.
24 So they share certain commonalities there, but that doesn't
13:45 25 mean AA is not effective. It's the number one in the world.

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13:45 1 You know, for a lot of people I think it's done a lot of good.

2 It doesn't mean I agree with all the 12 steps and what they
3 mean and the philosophical and theoretical aspects of it; but
4 yeah, I think it certainly can be a very positive development
13:45 5 and I think it has been for Mr. Charboneau.

6 Q. Other experts were directed to discuss the 2014 letter
7 from some of Mr. Charboneau's family.

8 A. Yes.

9 Q. Did you also have a chance to read that letter?

13:46 10 A. I did.

11 Q. And does that affect your opinion?

12 A. No.

13 Q. Why not?

14 A. Well, look, that's a heartfelt letter written from his
13:46 15 family. They're obviously on a number of domains, emotionally
16 and personally.

17 You know, they're very upset with Mr. Charboneau and for
18 pretty good reason, I would say. But they're not experts. I
19 mean, that's not their -- they can whatever, they can have
13:46 20 nothing to do with him, that's their right, but that doesn't
21 mean that puts them in a special position to say, okay, well
22 then you have to make him sexually dangerous because we are
23 pretty upset with him given what he's done currently and in
24 life around our family environment.

13:46 25 So I think we need to separate the two out. You bring it

J. Plaud - Direct Examination

13:46 1 in a trial, his family says he's dangerous, then he must be
2 dangerous. I think that's not very good to do that.

3 Q. I want to ask you a few questions about things that the
4 other experts testified about and wrote about in their reports.

13:47 5 Have you had an opportunity to read all of the other experts'
6 reports?

7 A. I have.

8 Q. And you were here for all of their testimony?

9 THE WITNESS: Judge, I was so on time this morning.

13:47 10 Yes.

11 BY MS. SHEA:

12 Q. Dr. North in his report wrote that in 30 years as a
13 licensed psychologist, I cannot remember ever encountering
14 someone with such a level of denial. Do you remember reading
13:47 15 that?

16 A. I did.

17 Q. And do you have a response to that?

18 A. Well, he must not get out much because I've seen a lot
19 more of that in my 30 years, but here's the thing with that. I
13:47 20 don't think that's true. This man was intoxicated
21 significantly. Nobody is disputing that. A lot of times in
22 these cases where alcohol is involved, oh, you're just using
23 alcohol as an excuse. This one everybody is crediting it, this
24 is the driving thing in this whole case.

13:48 25 So when you have everybody agreeing that alcohol played

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13:48 1 such a role earlier in his life, you know what, he's going to
2 not remember things, he is a nervous person. You know, a lot
3 of time shame, we talked about shame, shame is something that
4 in some people causes them to minimize or deny that which they
13:48 5 do remember because of that factor. And that's not necessarily
6 a negative thing. At least it shows that if they're shameful,
7 you want them to be ashamed and denial doesn't predict
8 recidivism. Like alcohol abuse, look at the research. It
9 doesn't predict increased risk to re-offend. If it did this
13:48 10 would be easier, but it doesn't.

11 May I say this, too, because I listened to the testimony?
12 He said that in his report and it was discussed about the level
13 of denial and all of this and lack of insight and all that, but
14 then he said in his testimony he's got insight. He was
13:49 15 referencing his participation in treatment now at CTP. You
16 can't have it both ways; you either have it or you don't have
17 it. You can't say, you know, he lacks insight but then testify
18 during the same testimony later on in the testimony, yes, he
19 has it. He used the word "insight." He has insight now, he
13:49 20 said, which is being demonstrated by his participation in CTP
21 right now. So which is it? Yes or no. You can't be both.

22 Q. Do you believe that Mr. Charboneau is in denial that he
23 has an alcohol problem --

24 A. No.

13:49 25 Q. -- currently?

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13:49 1 A. No. He wasn't in denial with me during the interview.
2 You know, I -- he was a little apprehensive at the beginning,
3 as my memory serves. He was a little apprehensive when I
4 started the interview so it took a while to develop a rapport
13:50 5 with him. I think I remember doing the testing first to let
6 him chill a little bit and then go back at him.

7 No, he never denied to me that he had a substance abuse
8 problem, and I think hopefully I put him at ease at some point
9 during that where he felt comfortable telling me things.

13:50 10 Q. Dr. North, in particular, testified that noncompliance
11 with supervision was, I believe he said, a robustly supported
12 risk factor. Do you agree with that assessment; and if so, why
13 doesn't that sway your opinion?

14 A. Well, I mean, that's kind of lot like -- it's not a yes or
13:50 15 no. Certainly, research has shown in the meta-analytic
16 research that noncompliance with supervision is a risk factor,
17 it is. Now, okay, how big a risk factor? Not much.

18 And here's the issue. If you look at the updated meta --
19 I mentioned the '98 Hanson and Bussiere meta-analysis. Fast
13:51 20 forward to the mid 2000s and there were updated Hanson
21 meta-analysis. And what appeared at one point was a category
22 essentially antisocial lifestyle orientation or words to that
23 effect and grouped under it is a whole bunch of stuff and
24 that's where this kind of noncompliance of supervision becomes
13:51 25 one sub element of that; but in and of itself, it's not

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13:51 1 predictive. If you bunch it with a whole other predictor
2 variables, most importantly, antisocial personality disorder
3 being the main thing, yeah, it has some predictability; but in
4 and of itself, no.

13:51 5 Q. Dr. Ross testified that she believes that 5 on the
6 Static-99 underestimated his risk of re-offense. Do you agree
7 with her conclusion?

8 A. I do not agree with her conclusion.

9 Q. And why not?

13:52 10 A. Well, I mean, that's just subjective. I say it
11 underestimates his risk, okay? So one says over and one says
12 under. What's the basis for it?

13 I'll give you the numbers. I present the re-offense
14 comparative numbers in my report and that's all I say. I don't
13:52 15 say underestimates or overestimates because it's never about
16 predicting an individual's risk to re-offend. That's a misuse
17 of the tool. You just say people who score a 5 and if you want
18 to use a certain sub group to compare, which I don't, I use the
19 routine sample, all the data, that people who score a 5 over
13:52 20 five years in the routine samples re-offended at X percent, in
21 this case, it's 15 percent, 15.2 percent. If I say I think
22 that's an underestimate. Okay? Put your money where your
23 mouth is. Why? I don't know. I didn't hear any articulation
24 of reasons.

13:53 25 Q. Dr. North testified that Mr. Charboneau's poor

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13:53 1 problem-solving skills; that that risk factor essentially
2 eclipsed all other risk factors. What is your response to
3 that, do you agree?

4 (Interruption due to fire alarm.)

13:55 5 BY MS. SHEA:

6 Q. I had asked you about Dr. North's testimony that his --
7 that Mr. Charboneau has poor problem-solving skills, that risk
8 factor essentially eclipsed all other risk factors. I was
9 hoping that you can respond with your take on that.

13:55 10 A. Yeah, poor problem solving. You know, there is a certain
11 jargon that is developed in the development of certain
12 instruments usually like the SR-AFV and things like that are
13 kind of experimental in nature.

14 Yeah, I would say -- I might even go so far as to say I
13:55 15 would agree that that has been historically an issue for him;
16 that he has had poor problem solving.

17 But, okay, does that mean -- how much more of a risk does
18 that make him? And again, if you go back to the research, if
19 you go back to the Mann, et al research 2010, none of that in
13:56 20 and of itself is a significant predictor of risk, it's not. So
21 I would acknowledge, yeah, I would agree, but that doesn't mean
22 sexually dangerous. Especially, yeah, in the absence of a
23 paraphilia, a major personality disorder and the like.

24 Q. Dr. Zinik commented on his direct examination that all of
13:56 25 Mr. Charboneau's violence appeared to be directed to women.

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13:56 1 Did you hear his testimony about that?

2 A. Yes.

3 Q. First, do you agree; and second, does that factor into
4 your opinion?

13:56 5 A. Well, I don't know that to be the case is probably the
6 easiest way to answer that question. There is no way given the
7 data that I reviewed to even say that that's the case, so...

8 Q. Dr. Zinik wrote in his report, and this is on page 23 of
9 his report, he wrote that Mr. Charboneau's sexual anxiety and
13:57 10 the fact that he has no ability to manage and control sexual
11 feelings when they do occur, especially under the influence of
12 alcohol, make him more sexually dangerous.

13 Do you agree with that?

14 A. No, I don't remember agree with it. And I certainly don't
13:57 15 think there's any way he can conclude that.

16 You know, I -- it bothers me a little bit, you know, no
17 ability. How do you have no ability? The man is a father to
18 children. Has been in a relationship. He has some ability.
19 And I'm certain in that relationship he certainly engaged in
13:57 20 appropriate sexual behavior. So even going back in time, there
21 is some ability. So I don't like those categoric ways to
22 describe things in, "no," so I would dismiss that.

23 Q. But do you believe that his sexual anxiety makes him more
24 sexually dangerous?

13:58 25 A. No.

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13:58 1 Q. Why not?

2 A. Well, because I think the sexual anxiety -- I think he has
3 an element of overall anxiety in interpersonal relationships as
4 well as in general social functioning. And has it caused him
13:58 5 to have difficulties in the past? Yes, of course it's caused
6 him difficulties in the past. May some of his drinking at
7 least be associated with a reduction in anxiety? You know,
8 it's not out of the realm of possibility, too.

9 But again, how many layers do you want to -- the more you
13:58 10 go inside and try to make this stuff make sense, sounds good
11 psychologically, but I don't think we know. It's not been
12 demonstrated in the evidence that that's necessarily the case.
13 You can make that conjecture, but you sure need to have more
14 data to support that.

13:59 15 Q. Dr. Zinik writes in his report on page 25 that
16 Mr. Charboneau has 15 of 20 factors present on the SVR-20. In
17 conclusion, he is a high risk in re-offending.

18 How much stock do you put into the SVR-20?

19 A. I've used the SVR-20, but it's not an actuarial tool.
13:59 20 Although, it can be scored, but it generally isn't. I don't
21 think it was in his case.

22 The SVR-20 is the 20 areas, 20 factors grouped in three
23 different areas relating to basically psychosocial adjustment,
24 sexual offense history and future planning. You know, I've
13:59 25 used it myself to structure clinically my approach to cases,

J. Plaud - Direct Examination

13:59 1 but to use it as a risk assessment tool, I generally don't
2 think that's really what -- I'm not aware of any good research
3 to support that use.

4 Q. So do you believe that having 15 of 20 factors present
14:00 5 would make him a sexually dangerous person?

6 A. No.

7 Q. Why not?

8 A. It wasn't designed for that, to answer that question. I
9 mean, I didn't score it so I don't even know if I agree with 15
14:00 10 of 20, so I would have to score it myself.

11 Q. In conclusion, Dr. Plaud, what factors did you find most
12 significant in concluding that Mr. Charboneau does not meet
13 criteria as a sexually dangerous person?

14 A. Well, my opinion is based on the following, kind of follow
14:00 15 the bouncing ball here. Mr. Charboneau has engaged in
16 sexually-offensive behavior. First when he was 22, 23 years
17 old. Clearly, he has a substance abuse problem and a diagnosis
18 to go along with it. He has engaged in sexual illegal behavior
19 on three or four occasions. Over that period of time, two of
14:01 20 whom were family members. Clearly, his alcohol abuse, as I
21 think earlier in life his inhalant abuse, has affected many
22 areas of his functioning, interpersonally, socially, legally,
23 sexually. He has been criminally sanctioned and now here he is
24 at 57 years old, he's been sober for 13 years, he does not
14:01 25 suffer from a paraphilia, he does not suffer from any major

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14:01 1 personality disorder. He has a substance abuse problem and a
2 diagnosis.

3 To be able to conclude in my judgment that he's sexually
4 dangerous you would have to do that prognosticator's two step.

14:01 5 You would have to first conclude that it would be likely that
6 he would relapse with alcohol; and as a result of that, he
7 would then have serious difficulty in refraining from further
8 acts of either child molestation or sexually violent conduct.

9 Given the absence of any paraphilia or other disorder,
14:02 10 given his institutional history, given the ongoing evidence,
11 we're coming up on a decade and a half of both general and
12 behavioral regulation and control, given his current age of 57
13 years of age, I am unable, and I want to underscore that four
14 times, to conclude that he will have serious difficulty in
14:02 15 refraining at this time. He is not sexually dangerous.

16 MS. SHEA: Thank you, Your Honor. No more questions.

17 THE COURT: Cross-examination?

18 MR. JAMES: Thank you, Your Honor.

19 CROSS-EXAMINATION

14:02 20 BY MR. JAMES:

21 Q. Good afternoon, Dr. Plaud.

22 A. Good afternoon.

23 Q. Dr. Plaud, on direct examination you stated that with
24 regard to the 1987 sexual assault, that Mr. Charboneau didn't
14:03 25 deny that he committed it, but he told you that he didn't

J. Plaud - Cross-Examination

14:03 1 remember?

2 A. Right.

3 Q. Right. But that's not what you wrote in your report. If
4 you look at page 7 of your report, the last -- the paragraph
14:03 5 that begins August 12th, 1987, the last sentence, "During the
6 clinical interview, Mr. Charboneau denied committing any
7 sexually offensive behavior as described above."

8 A. Right.

9 Q. That described the same sexual assault that you told --
14:03 10 you testified he stated to you he didn't remember.

11 A. He didn't remember, that's what he told me.

12 Q. But then in your report you say he denied committing it.

13 A. Right. He said, I don't think I did it, I don't remember.

14 That's what he told me. So there was an element of denial what
14:03 15 he said to me so I had to put it in as such, but I do recall
16 him specifically him saying he didn't remember.

17 Q. You didn't put that in your report, though?

18 A. You're right. I amend my report.

19 Q. You also testified that with regard to that denial you
14:04 20 stated that -- withdrawn -- that he did not deny to you during
21 the clinical interview that he -- that he didn't have an
22 alcohol problem or a substance abuse problem?

23 A. Correct.

24 Q. That he acknowledged that to you?

14:04 25 A. Right.

J. Plaud - Cross-Examination

14:04 1 Q. Now, you interviewed him on I believe it was February 9th?

2 A. February 9th, 2016.

3 Q. Okay. And then about nine days later he was interviewed
4 by Dr. Zinik and denied that he had an alcohol problem; is that
14:04 5 correct?

6 A. I came to learn that afterwards obviously, yes.

7 Q. And before you interviewed him on February 9th, Dr. North
8 had interviewed him on January 19th, right?

9 A. If you say so. I don't recall the date.

14:05 10 Q. Well, for the record, it is in Dr. North's report.

11 A. Okay.

12 Q. If you could go back to that, that's Exhibit 3, it's on
13 the first page.

14 A. I take your word for it.

14:05 15 Q. In that report, Dr. North interviewed him on January 19th.

16 A. Okay.

17 Q. And he denied to Dr. North that he had an alcohol problem.

18 A. I came to learn that as well after my interview; that's
19 correct.

14:05 20 Q. So is it concerning to you that he's saying these very
21 inconsistent diametrically opposite, find diametrically
22 opposite information through different experts in a short
23 timeframe?

24 A. I would make two observations in answer to your question.

14:05 25 Number one, I wasn't there. I know what he told me. I don't

J. Plaud - Cross-Examination

14:05 1 know how the questions were asked, I don't know how his rapport
2 was with them. I don't know how he received them. So, you
3 know, it could have been a function of him being nervous and
4 withdrawn. I don't know.

14:06 5 All I know is what he told me and that did not involve him
6 denying a substance abuse problem. That's all I can tell you.
7 They can speak for themselves.

8 Q. That's fine. With regard to problem solving being an
9 issue that Mr. Charboneau struggles, you were asked on direct
14:06 10 examination regarding Dr. North's analysis if that was one of
11 the bigger problems that Mr. Charboneau had.

12 A. Right.

13 Q. And I believe you agreed that he has a -- problem solving
14 was an issue that Mr. Charboneau does have.

14:06 15 A. Sure.

16 Q. And then I believe you went on to criticize it as a factor
17 supported by research; is that fair?

18 A. No, I don't think that's fair. What I said was it is a
19 factor identified, but in and of itself it's not, if you want
14:07 20 to use the term robust, a robust predictor. In other words, if
21 you say someone is a poor problem solver so you're 40 percent
22 of the way to being able to determine if someone is sexually
23 dangerous, that would be a robust or significant predictor.
24 It's not that. It's not anywhere near that.

14:07 25 Q. You would agree, however, that in combination with other

J. Plaud - Cross-Examination

14:07 1 factors it does?

2 A. Yeah. That's what I testified to. I said if you put it
3 in context with a whole bunch of other things --

4 Q. Such as --

14:07 5 A. Go ahead.

6 Q. One factor that is robust statistically is supervision
7 failure; is that correct?

8 A. I wouldn't say it's robust. It is a factor.

9 Q. In the Mann study, the 2010 study, in the 2010 Mann study,
14:07 10 they list a number of empirically supported factors, right?

11 A. That's right.

12 Q. And of the number of empirically supported factors,
13 supervision failure is one of the more robust ones, isn't it?

14 A. It is, but you have to -- I don't have the article in
14:08 15 front of me. I believe they present Cohen's statistics in
16 these factors. Do you have that? If you can give that to me,
17 I can answer your question hopefully. I don't have it to
18 memory right now.

19 Q. Do you recall that is one of the more robust factors?

14:08 20 A. Well, relatively speaking. In and of itself, it is not
21 predictive.

22 Q. I understand. That wasn't my question, though, whether it
23 in and of itself it was.

24 My question was whether it was one of the more robust
14:08 25 ones.

J. Plaud - Cross-Examination

14:08 1 A. It's one.

2 Q. Now, when you combine that with other empirically
3 supportive factors, then you have greater predictor factors,
4 wouldn't you?

14:08 5 A. Potentially.

6 Q. And you have more than one that indicates on
7 Mr. Charboneau, wouldn't you agree?

8 A. You have some risk factors that you can describe, yes. I
9 think they were described by the experts.

14:09 10 Q. Now, on direct examination you were asked by Ms. Shea
11 regarding the 2014 family letter and whether it would impact
12 your analysis, and paraphrasing you, you said it would not
13 because they're not experts, talking about the family,
14 obviously.

14:09 15 And would you agree, though, that a lack of support is
16 relevant in the sense that if he were to be -- if
17 Mr. Charboneau were to be released by the Court, he doesn't
18 have that protective factor where the person has family
19 supporting them through their recovery on their time while on
14:09 20 supervision to help lessen their sexually dangerousness?

21 A. Mr. James, you can't have it both ways. If you had the
22 family support you would be saying wasn't he offending when he
23 was around this family, isn't this a risk factor? This is what
24 happens. And then you say, well, he doesn't have the family
14:10 25 support, isn't that a risk factor, he doesn't have family

J. Plaud - Cross-Examination

14:10 1 support? I think I'd rather have him not going back to that
2 family. I don't think he ever really functioned very well
3 after age 12 within the context of that family environment.

4 So no, I don't think that particular family, for goodness
14:10 5 or whatever else, would be a good place for him to ever go back
6 to.

7 Q. Now, with regard to treatment, you reference that two
8 years supervised release and outpatient treatment would be
9 available to Mr. Charboneau?

14:10 10 A. Correct.

11 Q. Now, you said with regard to treatment, you look for the
12 least restrictive, is that -- am I paraphrasing your testimony
13 correctly?

14 A. Yes. To meet level of service needs in the least
14:10 15 restrictive environment given the risk factors involved, that's
16 really a key ethical manner of decision-making.

17 Q. Now, he was in the least restrictive treatment when he was
18 out between 2000 and 2003; is that correct?

19 A. He was.

14:11 20 Q. And he clearly sexually re-offended?

21 A. He did re-offend.

22 Q. How long did you interview Mr. Charboneau?

23 A. I don't recall specifically. It goes back -- I must have
24 spent at least in total of four hours or so with him.

14:11 25 Q. So four hours?

J. Plaud - Cross-Examination

14:11 1 A. Maybe longer.

2 Q. We won't hold you to that.

3 A. Please don't.

4 Q. Okay. So at least four hours with him, right?

14:11 5 A. Right.

6 Q. Now, you were also a treatment provider?

7 A. Correct.

8 Q. In fact, I think in your CV it says from 1994, and it

9 still says to present, you were providing services as a

14:11 10 clinical psychologist and a supervisor -- I don't know if

11 that's -- you tell me if that's still correct -- in North

12 Dakota?

13 A. The great state of North Dakota. I did. I was on faculty

14 at the University of North Dakota in the psychology department.

14:12 15 I went back into academia and it's a long story I don't want to

16 get into.

17 Q. Well, okay. I don't need the long story because the Court

18 does have to leave at 3:00. But you were in the STOP program,

19 S-T-O-P program in North Dakota?

14:12 20 A. Well, I wasn't in it. But I designed it, if that's what

21 you're asking.

22 Q. Right. Your CV still says from 1994 to present. Is that

23 correct?

24 A. Yeah. I still occasionally consult -- it was my program,

14:12 25 I created the program. It stood for the Specialized Treatment

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14:12 1 of Offenders Program. It was a statewide treatment program of
2 sex offenders in the State of North Dakota who also had a
3 history of developmental disabilities and autism. In other
4 words, they were not being served in the typical prison
14:13 5 settings and they were getting lost in the system. So as a
6 faculty member, I was consulting with the North Dakota
7 Developmental Center, which is what we called it then, ICFMR,
8 Intervening Care Facility Mental Retardation. It was an
9 inpatient; it was a locked facility. And I was asked by the
14:13 10 state to design a program, treatment program for sex offenders
11 who we could then get into a program to have services because
12 they couldn't benefit from treatment in the prisons, in jails
13 of North Dakota. That's what the program is.

14 Q. And that was a locked facility, you testified?

14:13 15 A. It was.

16 Q. Now, with regard to while you were treating sex offenders
17 in that program, you saw them daily, right?

18 A. I didn't see them daily. I had a full-time job at the
19 University. I had students there. I consulted once or twice a
14:13 20 week. It was about 40 miles away.

21 Q. Your staff saw them there?

22 A. Oh, yes.

23 Q. And your staff interacted with them there?

24 A. Correct.

14:14 25 Q. Much of the way that Dr. Holden interacts with

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14:14 1 Mr. Charboneau at the CTP?

2 A. No doubt.

3 Q. All right. And so you would agree, would you not, that
4 the treatment provider who has daily access to the individual,
14:14 5 who can observe the individual, would have greater insights to
6 the person's treatment needs say as someone who shows up for a
7 four-hour interview?

8 A. I would say in ordinary circumstances I would go with the
9 treatment provider, yes.

14:14 10 Q. All right. Now, you would agree that the therapeutic
11 alliance or relationship between a treating provider and a
12 patient is a very important thing?

13 A. It is a foundational element, yes.

14 Q. So when that alliance is made between the person who is in
14:15 15 treatment and the patient -- and the patient starts opening up,
16 finally revealing themselves to that person, that's a very
17 important thing?

18 A. It can be.

19 Q. And in the case of Mr. Charboneau, with his
14:15 20 well-documented neurocognitive disorders or his personality
21 being very closed apparently while he's sober, for him to open
22 up, that's a big thing, not a small thing?

23 A. I think to start he's had some problems opening up to
24 people, yeah.

14:15 25 Q. So it's true if he were to be released, that would be a

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14:15 1 setback in terms of his own treatment, wouldn't you agree?

2 A. I wouldn't put it in those terms of setback. It would
3 present some challenges probably to him; but certainly, I don't
4 think any challenge that couldn't be overcome.

14:16 5 Q. All right. Now, you testified that on examination Ms.
6 Shea asked you about Dr. Ross' report about the communal aspect
7 of the victims and I -- I believe you said that would lessen
8 his sexual offending.

9 Now, isn't that contrary, though, to the earlier part of
14:16 10 your testimony when you talked about the victim in 1982, that
11 he didn't really know that she was a relative of his at the
12 time?

13 A. Well, I'm not quite sure of your question. I said in my
14 testimony I don't consider him a classic incest offender noting
14:16 15 that two of his victims were, though, family members.

16 Where I think that enters my analysis about the family
17 members part is that, again, it -- I think it speaks to issues
18 of volitional capacity even at that time. Again, we're all
19 basically in agreement of the fact that he was a very active
14:17 20 and consistent alcohol abuser at that period of time. And --
21 and his offenses, especially during that time, we'll talk about
22 the last two, the ones that are closest in time, involved not
23 him going out and getting stranger victims, acting impulsive in
24 that way, which would, again, be a signal of volitional
14:17 25 difficulties, right? No. They were in the confines of his

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14:17 1 family environment where he's more familiar, where he has a
2 relationship already, et cetera.

3 I think that actually it's hard to say it's a positive
4 factor because how do you say that about a sex offender? But I
14:18 5 think you understand what I'm saying. It means he's not just
6 out there hanging around alleys and getting drunk in a bar and
7 then going out in the alley and waiting for women because he's
8 lost control of himself sexually. That's what I was referring
9 to.

14:18 10 Q. When you testified regarding Mr. Charboneau's excellent
11 behavioral control in institutions, you -- in reviewing all the
12 data, there's nothing in the reports that have been provided
13 that indicated that he was a trouble inmate back in '82 when he
14 was serving his sentence or back in 1990s, 2000 while serving a
14:18 15 sentence; is that correct?

16 A. I indicated as much on my direct testimony.

17 Q. So he's always had fairly good institutional control while
18 he's in that sort of a structure?

19 A. Yes.

14:18 20 THE WITNESS: If I may indulge the Court a bit, I'm
21 waterless.

22 BY MR. JAMES:

23 Q. Your answer to my question was a yes?

24 A. Right.

14:19 25 Q. Now, the record also shows clearly that every time he's

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14:19 1 been unstructured, in the community, right, because he has
2 been -- let me back up for just a second.

3 He has been in institutions for numerous years?

4 A. Yes.

14:19 5 Q. You got numerous 10 years stretches, 13, I think the
6 current 13-year stretch, right?

7 A. Right.

8 Q. So he's been out of the community for a significant period
9 of his life?

14:19 10 A. I would say, yeah, he has been.

11 Q. When he has been out in the community, he has not been
12 sexually offense-free for significant periods of time; wouldn't
13 that be a fair statement?

14 A. Well, the most recent it appears that was a period of
14:20 15 time, again, I don't want to make that a basis for any of my
16 opinions, but since you're asking me the question, there was a
17 period of time that he was offense-free in the community going
18 back in time most recently.

19 Q. Okay. My question was significant period of time. Do you
14:20 20 think there was a significant period of time where he remained
21 offense-free?

22 A. I'm not saying it's a significant period. I don't think
23 three years is a significant period of time. No, I never wrote
24 a sentence in my report about that, but I would note three
14:20 25 years -- most offenders that have lack of volition of

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14:20 1 recidivism, most of the offending occurs within the first year.
2 So it is what it is.

3 Q. Now, with regard to Prong 2, and the Court asked you some
4 questions and so did Ms. Shea regarding whether prong to in and
14:20 5 of itself would qualify, in your opinion, as a serious mental
6 illness, abnormality or disorder, and what I took from your
7 testimony, it seemed to me -- I don't want to use the word
8 hedge -- you stated that, well, it would have to be something,
9 with something else, a co-morbid other diagnosis; in other
14:21 10 words, whether it's paraphilia or with a personality disorder
11 and that that would be a stronger case in which you would
12 consider alcohol abuse disorder a serious mental illness,
13 abnormality or disorder?

14 A. You're half right. That was the second part of my answer.
14:21 15 The first part was it could in and of itself if there was more
16 concordance, more data to suggest and point to the conclusion.
17 If A, then B, to use basic logical notation. And we don't have
18 this in the case of Blake Charboneau.

19 Q. So let me ask you an example. Is it your opinion that
14:22 20 Mr. Charboneau would have to consume alcohol and walk out and
21 if he sees a woman and because now he's -- when I say "consume
22 alcohol," I mean intoxicated and drunk -- and he sees a woman,
23 so he slaps the woman and he rapes the woman. And then he's --
24 let's say he's not arrested that day, let's say he stumbles
14:22 25 home or whatever, then the next day he consumes alcohol again

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14:22 1 and he walks out to wherever he's at and sees a woman and then
2 he grabs that woman and rapes that woman, is that the type of
3 example you're saying that would cause you then to opine that
4 that person is now sexually dangerous pursuant to the Adam
14:22 5 Walsh Act if they have an alcohol abuse disorder?

6 A. I think you're putting that in one end of the continuum.
7 It doesn't even have to be that. It just has to be
8 significantly greater instances of sexually deregulation.
9 Doesn't have to mean that he's raping women, but he's grabbing
14:23 10 women, he's engaging in a bunch of risk behavior every time he
11 drinks.

12 I mean, there is no certain instances of three or four
13 over a long period of time with sexual assaults with
14 Mr. Charboneau. How many times do you think he's been
14:23 15 intoxicated during his lifetime? How many instances and what's
16 the correlation of him being intoxicated and him attempting to
17 engage, not even -- just attempting to engage in sexually
18 inappropriate behavior? Well, we don't know the answer to that
19 question, but we don't know enough to say that there's
14:23 20 indication that that was even back then how he was.

21 Did he at certain points do that? Yes. Did he also
22 engage in other illegal behaviors when he was intoxicated that
23 had nothing to do with sexual behavior? Yes. I counted over
24 20 instances that I think I put in my report.

14:24 25 So the weight would be in the nonsexual area when he was

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14:24 1 intoxicated. And if you say, well, jeez, let's count out the
2 time he was in the community because I think the guy was drunk
3 a thousand times. Well, then it's a very low correlation
4 between that and acting out in a sexually inappropriate manner.

14:24 5 So I mean, you have to put it in terms of this whole context
6 and not say every time he's out he's re-offending.

7 Q. Well, in this whole context, even in the nonsexual
8 offenses, he's convicted and many of these offenses he's
9 serving 30 days, 25 days, 50 days, so you have a number of
14:24 10 periods which even these numerous small periods he is in
11 custody; isn't that correct?

12 A. Uhm-uhm.

13 Q. So then we do have the 1987 sexual -- attempted sexual
14 assault for which he was not convicted of that, but you were
14:25 15 present when he testified that he, in fact, committed?

16 A. I was present.

17 Q. Well, do you believe that he actually committed it?

18 A. I took it -- did I not put it in as a sexual offense in my
19 report? I did. I don't believe he remembers.

14:25 20 Q. So you think he's untruthful when he testified under oath?

21 A. I just think he's nervous and said yes to just about
22 anything. Like I said, I think if you asked him if he was on
23 the grassy knoll, he probably would have said yes.

24 Q. You were present when he testified about going to AA. He
14:25 25 testified that Dr. Holden didn't recommend it. He didn't go

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14:25 1 because of Dr. Holden, he went on his own. Do you believe him?

2 A. I don't know. I don't know what the truth of it is.

3 Q. Well, I mean, if he's someone who will do whatever someone
4 says, then when he testifies that he did it on his own, are you
14:25 5 crediting his testimony that he --

6 THE COURT: Mr. James, next question.

7 BY MR. JAMES:

8 Q. You had a chance to read Mr. Charboneau's deposition; is
9 that correct?

14:26 10 A. I did.

11 Q. And you're aware that he testified with regard to alcohol
12 in the BOP, he talked about being at four different
13 institutions.

14 A. Correct.

14:26 15 Q. Wisconsin, Rochester, Butner. And with regard to hooch in
16 prison he testified that he testified that he didn't see it; is
17 that correct?

18 A. That's right.

19 MR. JAMES: May I just have one moment, Judge?

14:27 20 THE COURT: You may.

21 BY MR. JAMES:

22 Q. You would agree that Mr. Charboneau's alcohol abuse
23 disorder, which you have found, is a severe mental disorder; is
24 that correct?

14:27 25 A. Yes.

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14:27 1 Q. In fact, severe in a controlled environment?

2 A. Correct.

3 Q. Just like the others testified?

4 A. As I said, there's really no disparity among all the
14:27 5 experts diagnostically. We're pretty much singing the same
6 tune.

7 Q. So you agree with Prong 1?

8 A. Yes.

9 Q. And on Prong 2 you find the disorder, but in your opinion
14:27 10 it's not a serious mental illness, abnormality or disorder; is
11 that correct?

12 A. In this case, given the facts, I have difficulty making
13 that conclusion, that's correct.

14 Q. You agree that it's likely that if Mr. Charboneau was
14:28 15 released that he would drink?

16 A. I didn't say "likely." I said it would be more likely,
17 but you know, I have some hope for him given his current age,
18 institutional history and some of the things that he told me
19 during the interview as well as on the witness stand, I think
14:28 20 he's certainly aware of the situations and I think he's going
21 to try. And I'm glad he has supervised release because I think
22 you're going to help him to try. So you know, would it shock
23 me if he had a drink? No.

24 Q. Now, do you agree with me that it's more likely that if
14:28 25 released and if he does drink that he would become intoxicated?

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14:28 1 A. That if he drank he would become intoxicated?

2 Q. Yes.

3 A. Yes.

4 Q. Do you agree that it's more likely that if he did drink

14:28 5 and become intoxicated he would commit crimes such as being

6 arrested for public intoxication?

7 A. He could. It's possible.

8 Q. Do you agree that it's more likely if he were released and

9 were drinking he would be convicted of a crime such as

14:29 10 disorderly conduct?

11 A. It's possible.

12 Q. And do you agree it is more likely that if he were

13 arrested he would be convicted of a crime resisting lawful

14 arrest?

14:29 15 A. Anything is possible.

16 Q. And do you agree that it's more likely that if he was

17 released and he did drink that he would, in fact, commit a

18 sexual crime?

19 A. No, that's -- I'm not there. No, I don't agree.

14:29 20 MR. JAMES: May I have just a moment, Your Honor?

21 THE COURT: You may.

22 (Counsel conferring.)

23 BY MR. JAMES:

24 Q. Just a few questions, Doctor.

14:30 25 You looked at the federal regulations at 28 CFR 549.92; is

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14:30 1 that correct?

2 A. Yes.

3 Q. And that's at page 10 in your report?

4 A. Correct.

14:30 5 Q. And you would agree that Mr. Charboneau has used or used
6 force against his victims?

7 A. Yes.

8 Q. And you would agree that he threatened to place the victim
9 in fear that the victim would be harmed if they did not concede
14:30 10 to his sexual wishes?

11 A. Yeah, I found that he's engaged in sexually violent
12 conduct. I'm not disputing that.

13 Q. In fact, you agree that Mr. Charboneau has engaged in such
14 conduct where the victim was incapable of appraising the nature
14:31 15 of the conduct, right?

16 A. Yeah, I said Prong 1 is met. He engaged in sexually
17 violent conduct, yes.

18 Q. And you agree that he has engaged in acts of child
19 molestation?

14:31 20 A. That's his daughter, yes.

21 Q. You agree that he has offended while on supervision?

22 A. Yes.

23 Q. And he has engaged in offenses while likely to be caught?

24 A. He has.

14:31 25 Q. And that he has not successfully completed sex offender

14:31 1 treatment?

2 A. He has not.

3 MR. JAMES: No further questions, Your Honor.

4 THE COURT: Thank you.

14:31 5 Any redirect?

6 MS. SHEA: No redirect, Your Honor.

7 THE COURT: Thank you, Doctor. Please watch your
8 step stepping down.

9 If counsel could approach.

14:32 10 (Ms. Shea and Mr. James approached the bench.)

11 MS. SHEA: Your Honor, at this time the defense
12 rests.

13 THE COURT: The Respondent has rested and I will now
14 hear closing arguments from the Government.

14:33 15 MR. JAMES: Thank you, Judge.

16 Your Honor, in this case the United States believes
17 that we have proved by clear and convincing evidence that
18 Mr. Charboneau, one, suffers -- well, one, he has engaged or
19 attempted to engage in acts of violence and child molestation,
14:33 20 and that's Prong 1 and nobody disputes that, so I won't go any
21 further.

22 With Prong 2, we believe we proved by clear and
23 convincing evidence that he does suffer from severe mental
24 illness, abnormality or disorder.

14:33 25 And in saying that, Judge, I believe the contentions

14:33 1 from the Respondent, it was in the opening argument and the
2 questioning, is that essentially he does not suffer from a
3 paraphilia and since he doesn't suffer from a paraphilia, that
4 that somehow lessens his sexual dangerousness.

14:33 5 Well, this Court has, in *United States versus*
6 *Goshay* looked at that, examined that issue and found that, in
7 fact, that alcohol abuse disorder does qualify as a serious
8 mental illness, abnormality or disorder. The case number is
9 5:082051-VR. That's in the *Goshay* case and the order is at
14:34 10 Docket Entry 91 under that case.

11 And has Mr. Charboneau's alcohol abuse disorder, has
12 it been severe? Of course it has. Every expert says so. Has
13 it negatively impacted his life? He has spent decades while
14 incarcerated because of it. It has caused his sexual offending
14:34 15 because it disinhibits Mr. Charboneau and that's what the bulk
16 of the expert testimony is. And when he does that to such an
17 extent that he cannot control himself, he -- he while
18 intoxicated sexually assaulted a woman in 1982, his daughter in
19 1988. In fact, he felt something coming over himself and from
14:35 20 the testimony and interviews he could not control himself.
21 Now, and again in 1987, although this was not a convicted
22 offense, for the first time he now admits before the Court
23 that, yes, he committed it. In 2016, he finally admitted that,
24 well, he actually went into the woman's home. Now, Dr. Plaud
14:35 25 may downplay that, but, one, I would submit to the Court that

14:36 1 when Mr. Charboneau is testifying wholeheartedly he remembers
2 that, I believe that is a witness stand conversion. He's
3 always known he's committed the offense. He doesn't try to
4 deny it, but because now of civil commitment he wants to show
14:36 5 that he is better and more understanding and has greater
6 insight, although he is only in the second stage of the
7 treatment program that now he says to you, to the Court, that
8 now he remembers it.

9 Then, of course, 1988 and then 2003. And 2003 is
14:36 10 very significant because he was out in the community after
11 serving a very long stretch, a very long stretch of prison. So
12 he's in the community and when he's in a structured
13 environment, he does somewhat well. And when that was loosened
14 and he was then allowed to go to his own apartment, he drank
14:36 15 again. And then I -- during supervision he's tested, he's
16 tested that same day. After he passes the test, he consumes
17 alcohol and commits a sexual offense and now he's in custody.

18 And the argument, well, he's been straight for 13
19 years. Well, every expert testifies, including Dr. Plaud, his
14:37 20 records show he's always well-managed, well-behaved while he's
21 in a structured environment in custody.

22 The records before the Court show that we believe
23 that Mr. Charboneau will have serious difficulty in refraining.
24 There's nothing in his background that would show that he would
14:37 25 not if he were released.

14:37 1 He is also now in treatment and it would be a setback
2 for Mr. Charboneau, A, if this Court were to release him
3 because, one, he is sexually dangerous. We believe we proved
4 that by clear and convincing evidence; but two, he is in
14:38 5 treatment, and for the Court to remove that from him would
6 negatively impact him. It would impact the community for which
7 he would be sent back to; and more importantly, the Adam Wash
8 Act is for the safety of the community, it's not just for the
9 treatment of the individual, and the community would not be
14:38 10 safe if this Court were to release Mr. Charboneau.

11 Thank you, Your Honor.

12 THE COURT: Thank you, Mr. James.

13 Ms. Shea?

14 MS. SHEA: Thank you, Your Honor.

14:38 15 Judge, in this case the Government's theory of
16 dangerousness rests on the idea that Mr. Charboneau will have
17 serious difficulty refraining from drinking. Everyone agrees
18 when he is sober he is not at risk to anyone. He is not at
19 risk to the community at all. So it requires this
14:39 20 prognosticator's two-step that Dr. Plaud was talking about.

21 First, the Government has to show that he would have
22 serious difficulty refraining from drinking and then they have
23 to show that his serious difficulty refraining from drinking
24 would cause him serious difficulty refraining from sexually
14:39 25 violent conduct or child molestation.

14:39 1 And I think everyone pretty much agrees with that;
2 that that is the Government's theory in this case, this
3 two-step theory. And Dr. Zinik I believe admitted to that on
4 the stand as well. He talked about how, first, Mr. Charboneau
14:39 5 has to get drunk; second, he has to become sexually aroused;
6 third, he has to be in the presence of a female, and then he's
7 dangerous.

8 But it's very conditional, Judge. It has -- their
9 theory of dangerously is predicated on so many other things
14:39 10 happening and this does go directly to their ability to prove
11 their case by clear and convincing evidence.

12 The statute, in explaining what the Government has to
13 prove, it says the Government has to prove a serious mental
14 disorder and then as a result of which causes serious
14:40 15 difficulty refraining. That "as a result of which" I think is
16 really the thrust of this case. Can they prove a causal link
17 between his alcoholism and his serious difficulty refraining
18 from sexually re-offending.

19 And Judge, I think that this is something that the
14:40 20 other District Court Judges in this district have wrestled
21 with. The Fourth Circuit, as far as my colleague and I can
22 find over this week, has not addressed this issue as to whether
23 alcoholism alone is enough.

24 There is one case that the Court has undoubtedly
14:40 25 read, which is United States versus *Antone* and it's very

14:40 1 instructive, we believe, in this case and we think it controls
2 and necessarily leads to a finding against the Government in
3 this case.

14:41 4 I do want to point out in *Antone* that the Respondent
5 in that case did not appeal whether or not Prong 2 was met. So
6 the Fourth Circuit did not have occasion to decide whether or
7 not alcoholism would be enough to commit someone under the Adam
8 Walsh Act. They specifically say that we are not addressing
9 that question.

14:41 10 But I want to point out some of this struggle that
11 I'm talking about, struggle with whether or not alcoholism is
12 enough. So in *Antone*, I'm sure the Court's familiar with the
13 history that that was the case that Magistrate Judge Gates
14 actually had the first hearing and then Judge Flanagan came to
14:41 15 a different conclusion.

16 But in Judge Gates' order, and this is in *United*
17 *States vs. Antone*, 732 F.3d 151 (4th Cir. 2014) at page 163,
18 Judge Gates is citing Dr. Gutierrez, who is the BOP doctor in
19 that case, that substance abuse diagnosis alone could not
14:42 20 essentially stand by itself for civil commitment. In this
21 case, the Government put forth a personality disorder as well,
22 which the Court declined to adopt. But they were talking about
23 this. And this is something that I think courts are wrestling
24 with, is that enough to commit someone based on alcoholism?

14:42 25 Other judges have wrestled with it as well. Judge

14:42 1 Howard had two cases where this came up, this topic comes up,
2 which was *United States versus Julius*, and *United States versus*
3 *Sneezer*. In both of those cases, Judge, Judge Howard found
4 against the Government and in favor of the Respondent. Both of
14:42 5 those were instances where the Respondents committed sex
6 offenses under the influence of alcohol, and I think that Judge
7 Howard says that he struggled with it. In both of these
8 orders, they use very similar language in *Julius* and *Sneezer*.
9 But he says, the Court need not decide in this case whether an
14:43 10 antisocial personality disorder or substance abuse in
11 combination or in isolation constitutes a serious mental
12 disorder sufficient to civilly commit an individual under
13 Section 4248 because even assuming that they have, the third
14 prong isn't met.

14:43 15 Similarly, Judge Boyle in the case of *United States*
16 *versus Clifford Begay*, B-E-G-A-Y, he found -- that was another
17 case where the Respondent was someone who was a drinker and had
18 committed sexual assaults while drinking -- under his
19 discussion of alcoholism he says, Each of the testifying
14:43 20 experts opine to Mr. Begay either currently suffers from
21 alcohol, cannabis dependence or he suffers from those, but is
22 in remission. None of the experts, however, opines that either
23 alcohol dependence or cannabis dependence constitutes a serious
24 mental disorder for purposes of the Adam Wash Act.

14:44 25 Accordingly, the Court finds the Government has not shown by

14:44 1 clear and convincing evidence his alcohol, cannabis dependence
2 constitutes serious mental disorders. And in his -- he
3 footnotes that and says, To find to the contrary may well test
4 the limits of what Congress contemplated when requiring that
14:44 5 Section 4248 Respondent suffer from a serious mental disorder.

6 I think that the judges really are wrestling with
7 this. I'd be remiss if I didn't point out *Goshay*, which
8 opposing counsel has already pointed out. That is the only
9 case that we have found in our district where any of our judges
14:44 10 have found that alcohol use alone constitutes enough to meet
11 Prong 2. But Judge, I have to point out a couple things about
12 that opinion. First, I'm not conceding that it was deciding
13 correctly and of course it offers you no preferential value;
14 but second, Mr. Goshay had no one even testify on his behalf.
14:45 15 He had no doctor testify on his behalf. It was only the
16 Government that called witnesses in that case.

17 THE COURT: Did he get committed and did not appeal?

18 MS. SHEA: He did not appeal, Judge. There is no
19 opinion that affirms this decision or affirms the analysis in
14:45 20 it.

21 But I also think it's noteworthy to distinguish
22 Mr. Goshay from Mr. Charboneau. Mr. Goshay was drinking in
23 prison, Judge. He was drinking in the BOP. So I think even if
24 the Court wants to credit this opinion and does believe that it
14:45 25 came to the right conclusion, I think it is a very different

14:45 1 scenario than the scenario that is before this Court.

2 I think that the reason why not having a paraphilia
3 makes the causal link more attenuating, it's because with a
4 paraphilia, paraphilia is directly related to sexual offending,
14:46 5 it's what the disorder is, it's an arousal to something that's
6 deviant. So, of course, it's in the causal chain.

7 With alcoholism that causal chain necessarily becomes
8 attenuated because the disorder does not necessarily have
9 anything to do with sex offending.

14:46 10 But I think for Mr. Charboneau in this case we're not
11 saying that the Court has to say that alcoholism is never
12 enough to meet Prong 2. We're saying that in this case, they
13 simply have not shown that. So already the causal link is
14 attenuated. But then, here, in light of the evidence that's in
14:46 15 the record before this Court, they simply have not shown it.
16 So other things that make it attenuated, one is that he has so
17 many other kinds of convictions other than sex offenses.

18 I don't think this can be understated, Judge. That
19 means he's either drunk all the time and that that manifests
14:47 20 itself in many different ways. That weakens the causal chain.
21 It shows that alcoholism does not necessarily have an effect on
22 his volitional control with respect to sex offending. And I
23 think the record before this Court as to what happened in 2000
24 to 2003, either he's not really drinking at all, except for a
14:47 25 couple of times, which shows that he does have an ability to

14:47 1 control his drinking, he does have the ability to refrain from
2 alcohol or he is drinking all the time and not offending. I
3 think either way, it's making the causal chain even more
4 attenuated.

14:47 5 But I also can't understate the importance of age in
6 this case, the importance of how long ago it's been he's had a
7 sex offense and his perfect behavior in prison.

8 Judge, he's been sober for 13 years, he's been
9 completely compliant. This is someone who has caused no
14:48 10 disruptions whatsoever in the last 13 years. He's willing to
11 do treatment. I don't think that should be held against him.
12 I think the fact he's open to it is a positive thing.

13 And I would also point out that in *Antone*, the reason
14 that the Fourth Circuit reversed Judge Flanagan is because the
14:48 15 Government experts that she relied upon did exactly what the
16 Government experts in this case have done, which is ignore the
17 past 13 years. It's actually about the same amount of time
18 that the Government experts there are ignoring as the
19 Government experts here are. This is in *United States versus*
14:48 20 *Antone* on page 165, it's talking about how they are reluctant
21 to reverse courts in these cases. And it says: This is
22 precisely what's at stake here. Our review of the lower court
23 opinion leads us to conclude that the District Court's
24 inadequate consideration of certain substantial evidence,
14:49 25 namely *Antone's* behavior in the past 14 years or so,

14:49 1 constitutes reversible error. Our subsequent analysis of the
2 evidentiary record leaves us with a definite and firm
3 conviction that Antone's commitment should be reversed.

4 That's what we are doing here, Judge. He's a perfect
14:49 5 inmate. He's doing perfectly, he's sober, he's thinking
6 clearly. There is no evidence currently that his alcoholism
7 has such a grip on him that it would lead him to serious
8 difficulty refraining from sexual re-offending.

9 I think there have been several red herrings that
14:49 10 have been thrown out during this hearing that I think the Court
11 should discredit and not give a lot of weight to, certainly not
12 hinge on a decision committing upon.

13 I think the letter from 2014, the family members'
14 letter, I think Dr. Plaud said it perfectly. They are not
14:50 15 doctors. That is completely within their rights for not
16 wanting Mr. Charboneau to come back and be with them, but that
17 should not lead to a finding of dangerousness.

18 I think there's been a lot of testimony about
19 impeding his progress in treatment. Judge, the question before
14:50 20 this Court is not whether he is going to be better off in
21 treatment for the next four, five, however long a commitment
22 would last at Butner. That's not the question is would it be
23 better. The question is whether or not they can show by clear
24 and convincing evidence that they met the prongs. It's beside
14:50 25 the point if he would benefit from treatment, and moreover, he

14:50 1 could get that on the outside.

2 I think the comments of Dr. Holden I think actually
3 came across more watered down than their testimony, than they
4 appeared in the actual exhibits, but I don't think, Judge,
14:50 5 those should be considered admissions of true dangerousness. I
6 certainly don't think they would be enough to support a finding
7 in favor of the Government.

8 I think how Dr. Plaud explained it makes complete
9 sense. This is someone who is compliant, he's a pleaser, he's
14:51 10 trying to say what he thinks his treatment provider wants to
11 hear. It's unclear whether he understood what sexually
12 dangerous meant when she explained it to him, so we would ask
13 you not to hinge your finding on that.

14 Lastly, Judge, I just would like to point out this
14:51 15 emphasis that I heard through the experts of going through the
16 BOP regulation, checking the box, does he meet this regulation,
17 does he meet this regulation. Judge, this isn't a check-box
18 approach. If he gets checks in everything, it doesn't make him
19 sexually dangerous. It's whether or not they can prove by
14:51 20 clear and convincing evidence he has a serious mental disorder
21 that causes serious difficulty refraining. And in light of the
22 entire record of this case and the precedential effect of
23 *United States versus Antone*, they simply have not and cannot do
24 that with Mr. Charboneau.

14:52 25 THE COURT: Thank you.

14:52 1 Anything else today?

2 MR. JAMES: No, Your Honor.

3 THE COURT: Okay. I do thank counsel for their work
4 here today and I thank all of the experts that are still here.

14:52 5 I thank them for their testimony and Mr. Charboneau for his
6 testimony.

7 As in past cases, I'm going to take it under
8 advisement and reread everything once I have a benefit of
9 proposed findings that you all submit and at some point we will
14:52 10 all reconvene and I'll give you my decision.

11 We will be in recess until 9:00 a.m. Monday.

12 (The proceedings concluded at 2:54 p.m.)
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14:52 1 UNITED STATE DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
3
4

14:52 5 CERTIFICATE OF OFFICIAL REPORTER
6

7 I, Amy M. Condon, CRR, CSR, RPR, Federal Official Court
8 Reporter, in and for the United States District Court for the
9 Eastern District of North Carolina, do hereby certify that
14:52 10 pursuant to Section 753, Title 28, United States Code, that the
11 foregoing is a true and correct transcript of the
12 stenographically reported proceedings held in the
13 above-entitled matter and that the transcript page format is in
14 conformance with the regulations of the Judicial Conference of
14:52 15 the United States.
16
17

18 Dated this 12th day of December, 2017.
19

14:52 20 /s/ Amy M. Condon
21 Amy M. Condon, CRR, CSR, RPR
22 U.S. Official Court Reporter
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA * Case No. 5:15-HC-02287
 *
vs. * Raleigh, North Carolina
 * September 28, 2017
BLAKE CHARBONEAU, * 4 p.m.
 *
 Respondent. *

TRANSCRIPT OF HEARING TO ANNOUNCE DECISION
BEFORE THE HONORABLE JAMES C. DEVER, III
UNITED STATES CHIEF DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by stenotype reporter.
Transcript produced by Computer-Aided Transcription.

P R O C E E D I N G S

(Respondent present.)

THE COURT: Good afternoon. Welcome to United States District Court for the Eastern District of North Carolina. The Court is going to announce its findings and conclusions in the matter of United States versus Blake Charboneau, 5:15-HC-2287-D. After I do that, I'll sign a short order incorporating by reference my findings and conclusions.

The United States seeks to civilly commit Blake Charboneau as a sexually dangerous person under the Adam Walsh Child Protection and Safety Act of 2006, which is codified at 18, U.S.C., Sections 4247 and 4248. To civilly commit Charboneau under the Adam Walsh Act, the Government must prove by clear and convincing evidence that he is sexually dangerous. A person is sexually dangerous if he, quote, has engaged or attempted to engage in sexually violent conduct or child molestation and is sexually dangerous to others, end quote, 18, U.S.C., Section 4247(a)(5). To determine that a person is sexually dangerous to others, a court must find that he, quote, suffers from a serious mental illness, abnormality or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released, end quote, 18, U.S.C., Section 4247(a)(6).

The Court has considered and reviewed all admissible evidence, including the testimony and exhibits. The Court now

1 makes the following findings of fact and conclusions of law:

2 On July 24th, 2015, Bureau of Prisons doctor, Heather Ross,
3 a forensic psychologist, prepared a precertification report for
4 the Sex Offender Certification Review Branch.

5 On December 3rd, 2015, pursuant to 18, U.S.C., Section
6 4248, the Government filed a certification alleging Charboneau
7 is a sexually dangerous person.

8 On December 8th, 2015, the Court appointed Dr. Christopher
9 North as a court-selected mental health examiner.

10 On January 4th, 2016, the Court appointed Dr. Joseph Plaud
11 as an additional mental health examiner selected by Charboneau.
12 The Government also retained forensic psychologist Dr. Gary
13 Zinik, an expert forensic psychologist. Dr. Zinik conducted a
14 forensic examination of Charboneau.

15 Charboneau is a 57-year-old Native American member of the
16 Turtle Mountain Band of the Chippewa Tribe. He was born in
17 Devils Lake, North Dakota, and resided there until he was 15
18 years old. He then moved to Fort Totten, North Dakota. He is
19 the fifth of twelve children.

20 As a child, Charboneau began drinking beer with his
21 parents. He would sometimes drink as many as 12 cans of beer.
22 If his parents stopped drinking for the night and went to
23 sleep, he would too. If they stayed up drinking beer, he would
24 stay up drinking beer with them. He continued to drink alcohol
25 extensively throughout his teenage years. At approximately age

1 12, Charboneau also began using inhalants extensively to get
2 high. He inhaled gasoline, spray paint, lighter fluid, and
3 glue.

4 Charboneau's school performance and behavior deteriorated
5 rapidly at age 12. He was arrested for fighting and running
6 away at age 13. His first of many commitments to the North
7 Dakota State Hospital at Jamestown occurred at age 16 when he
8 was placed in the adolescent unit for substance abuse and being
9 incorrigible.

10 At age 20 Charboneau's IQ was tested and he was placed in
11 the, quote, low normal to borderline range of intelligence and
12 found to be characterologically disturbed with minimal organic
13 involvement, in general cortical problems consistent with his
14 extensive history of inhalant abuse. See Dr. North report
15 page 3.

16 Between ages 18 to 22, he was arrested six times for
17 disorderly conduct, public intoxication, failure to appear.
18 Before age 22, he had been admitted 12 times to Jamestown for
19 treatment of chemical dependency and mental problems.

20 Charboneau's parents are no longer married and his mother
21 reported that Charboneau's father may have sexually abused him
22 and his siblings. Charboneau has no contact with his family.
23 Charboneau is single and has fathered two children with a woman
24 named Emma Bull Bear, who is deceased. The children are now
25 adults.

1 Charboneau withdrew from school while in the ninth grade.
2 In 1977 at age 17. Charboneau attended Kicking Horse Job Corps
3 in Montana briefly, but was discharged after staff observed him
4 sniffing gas and committing a superficial suicide gesture.
5 Charboneau has worked sporadically at unspecified temporary
6 jobs. Before his most recent federal incarceration, he worked
7 as a dishwasher.

8 Charboneau has had frequent alcohol-fueled contact with the
9 criminal justice system. According to records from the North
10 Dakota State Hospital at Jamestown, tribal law enforcement
11 officers first arrested Charboneau when he was 13 years old for
12 repeatedly running away and being prone to fighting. Since
13 1978, law enforcement officers have arrested or taken
14 Charboneau into custody approximately 36 times for various
15 crimes, ranging from disorderly conduct, public intoxication,
16 assault, arson, and liquor violations to sexual crimes. Over
17 20 of Charboneau's offenses are related to his abuse of
18 alcohol. All four of his sexually violent offenses are related
19 to his abuse of alcohol.

20 On June 30th, 1982, Charboneau, then 22 years old, pleaded
21 guilty to his first violent sexual crime. On April 2nd, 1982,
22 Charboneau attended a party where the victim, his 23-year-old
23 female cousin, was also present. The victim left the party at
24 approximately 1 a.m. on April 3rd and returned to an apartment
25 of a friend. Charboneau, then intoxicated, followed the

1 victim. After the victim went to sleep, Charboneau pushed his
2 way inside the apartment and demanded cigarettes from his
3 cousin. He then grabbed his cousin, tore off her nightgown and
4 underwear, slapped her across the face, and with a closed fist
5 hit her legs and threatened to kill her if she did not submit
6 to sex or if she told anyone. Charboneau then raped her until
7 two friends heard her screams and entered the apartment and
8 found the victim and Charboneau in the bedroom. When the
9 others arrived, Charboneau stopped raping the victim. The
10 rescuer asked Charboneau what happened. He laughed, commented
11 incoherently, and left the apartment.

12 Fort Totten police officers arrested Charboneau the next
13 day for fighting. When officers questioned him about the
14 sexual assault, Charboneau told officers that he could not
15 remember what occurred because he had suffered an alcoholic
16 blackout. Fort Totten police charged Charboneau with rape and
17 assault. As part of a negotiated plea agreement, Charboneau
18 pleaded guilty to the assault charge and the Court sentenced
19 him to 18 months imprisonment.

20 On August 11th, 1987, Charboneau, then age 27, committed
21 his second alcohol-fueled, violent sexual offense. Charboneau
22 entered a women's home and forcibly removed her clothing and
23 attempted to rape her on the kitchen floor. The victim's
24 husband then came home and stopped the rape. When questioned
25 about the incident, Charboneau provided varying accounts. He

1 told Dr. North on January 19th, 2016, that he does not remember
2 anything about the 1987 arrest for sexually assaulting a woman
3 who lived near his brother other than after being stopped
4 someone, quote, kicked the shit out of me and she never pressed
5 charges, end quote.

6 On February 9th, 2016, Charboneau denied committing the
7 offense during his clinical interview with Dr. Plaud. On.

8 February 18th, 2016, Charboneau told Dr. Zinik that he had
9 no memory of the actual incident; but when Dr. Zinik reminded
10 Charboneau of the victim's name, Charboneau stated that he
11 remembered meeting the victim the night before, but on the date
12 of the sexual assault, he was drinking alcohol with his brother
13 and only recalls that he woke up bleeding in a jail cell after
14 being beaten up.

15 Similarly, when deposed, Charboneau admitted that he
16 forcibly entered a woman's home. He testified that he could
17 not remember unbuckling his pants, forcing the woman to remove
18 her clothing, attempting to rape the woman on the kitchen floor
19 or recall the woman's husband arriving in time to stop him.
20 Charboneau also testified in his deposition that he could not
21 recall the events because he was drinking alcohol at the time.

22 Charboneau's third alcohol-fueled sexual offense occurred
23 on July 31st, 1988, after a family picnic. After drinking
24 alcohol for most of the day, Charboneau, then age 28, took his
25 10-year-old daughter to an area where an onlooker's view would

1 be obscured by bushes and raped the child. However,
2 Charboneau's 5-year-old nephew was present and observed the
3 rape. Charboneau halted the rape when his sister, Roberta,
4 honked the horn of her automobile as she was looking for her
5 son and niece. Charboneau's daughter ran to the car and told
6 Roberta that Charboneau had raped her. She also reported that
7 Charboneau slapped and punched her in the face, bloodied her
8 nose during the sexual assault. Roberta told law enforcement
9 officers that her niece had a bloody nose and that her clothing
10 was disheveled. Roberta also told law enforcement officers
11 that she saw Charboneau buttoning his pants as he emerged from
12 the bushes. A physical examination of the 10-year-old victim
13 revealed pubescent genitalia with what appeared to be sperm in
14 the region of the labia and a ruptured hymen, which was
15 bleeding slightly.

16 On October 27th, 1988, a jury found Charboneau, then 28
17 years old, guilty of aggravated sexual abuse by force. After
18 the jury verdict, the Court committed Charboneau to the custody
19 of the Attorney General for a mental examination pursuant to
20 18, U.S.C., Section 4244, before sentencing.

21 On December 5th, 1989, the warden of the federal medical
22 facility in Rochester, Minnesota, certified that Charboneau had
23 recovered to the extent that he no longer required psychiatric
24 hospitalization and could return for sentencing.

25 On January 4th, 1990, at sentencing, Charboneau alleged

1 that he suffered from a diminished mental capacity and sought a
2 downward departure from the established guideline range.
3 Although the Court agreed that medical records reflected a
4 diminished mental capacity, the Court denied the motion based
5 on the violent nature of the crime and Charboneau's
6 voluntarily -- voluntary use of intoxicants before the rape.
7 It was at the sentencing proceeding that Charboneau first
8 admitted that he, in fact, had raped his daughter.

9 The Court sentenced Charboneau to 168 months imprisonment
10 and recommended that BOP place him at a federal medical center.
11 The Court ordered that Charboneau also serve a five-year term
12 of supervised release, barred Charboneau from using alcohol,
13 narcotic drugs or any other controlled substances without a
14 prescription by a licensed medical practitioner, and required
15 drug and alcohol testing to verify Charboneau's compliance.

16 On October 11th, 2000, Charboneau, then age 41, was
17 released from BOP custody to the District of North Dakota and
18 began his term of supervised release. The Court modified
19 Charboneau's conditions of supervision to include sex offender
20 registry, no contact with minors, no residing with minors, no
21 attempt to communicate with or traveling near the victims of
22 his offense, no loitering near areas where children congregate,
23 no dating or socializing with anyone with children, and
24 participation in sex offender treatment, including submitting
25 to the administration of a polygraph.

1 On May 1st, 2001, Charboneau's supervision was transferred
2 to the Rapid City, South Dakota, office for his placement in
3 Community Alternatives of the Black Hills, a community
4 correction center. The transfer was intended to provide him
5 access to mental health and sex offender treatment.

6 In 2003 Charboneau, then age 44, committed his fourth
7 alcohol-fueled, violent sexual offense. The victim was his
8 adult niece. On the morning of July 11th, 2003, Charboneau
9 went to his probation officer's office and gave a urine sample
10 to test for alcohol. At the time Charboneau was on supervised
11 release in the community and receiving sex offender treatment.
12 He was subject to the other conditions of supervision that I've
13 already mentioned.

14 Notwithstanding all of that, on July 11th, 2003, at 4 p.m.
15 Charboneau went to his niece's apartment. The victim's
16 girlfriend was also present. Charboneau and the victim drank
17 Black Velvet whiskey and Coke from about 4 p.m. to 8 p.m. S.V.
18 did not drink. A second friend of the victim's arrived at some
19 point, but left at approximately 9 p.m. The victim then told
20 Charboneau that she was going to sleep. Charboneau sat on a
21 footstool and continued to drink alcohol as the victim and S.V.
22 lay down to sleep on a pull-out bed located in the living room.

23 The victim awoke at 11 p.m. and discovered that Charboneau
24 had removed her shorts and underwear and was performing
25 cunnilingus on her. The victim told Charboneau to stop. She

1 got up, grabbed her shorts, and went to the bathroom.

2 Charboneau pursued the victim into the bathroom where he pushed
3 her and asked her if she was angry. The victim told Charboneau
4 that she was angry. The victim tried to close the door, but
5 Charboneau placed his foot inside the door and told her that he
6 would not allow her to close the door unless she told him that
7 she was not angry with him. The victim complied and Charboneau
8 allowed her to close the door. The victim dressed and woke up
9 S.V. and told her what happened. Charboneau remained in the
10 residence and continued to drink alcohol. Charboneau left
11 after approximately 15 minutes of demands from the victim that
12 he leave. The victim then went back to sleep.

13 Charboneau returned at 4:30 a.m. and awoke the victim. The
14 victim and Charboneau smoked cigarettes. She told Charboneau
15 that she was angry at him. He asked her if she did not like
16 men. Charboneau then threw the victim to the ground and pulled
17 down her shorts and forcibly removed her underwear. Charboneau
18 removed his pants and attempted to rape the victim. The victim
19 told Charboneau that she would scream. Charboneau threatened
20 to punch her if she did. The victim fought off Charboneau and
21 ran to the bathroom. Charboneau followed and stopped her from
22 closing the door. The victim eventually was able to reason
23 with Charboneau. She asked him to give her a cigarette.
24 Charboneau then put his pants back on as the victim put on her
25 underwear. The victim returned to the living room and put her

1 shorts on. Charboneau and the victim went to the victim's
2 girlfriend's apartment. Charboneau stood outside. The victim
3 and her friend then went to the sheriff's office and reported
4 the incident.

5 Law enforcement officers interviewed Charboneau. He told
6 them that he was the victim's uncle by blood and that he had
7 known her for about six months. On July 14th, 2003, a Deputy
8 State's Attorney filed an information in the Seventh Judicial
9 Circuit in Pennington, South Dakota, that charged Charboneau
10 with second-degree rape and attempted second-degree rape. The
11 State later amended the information to charge Charboneau with
12 engaging in sexual contact with a person incapable of
13 consenting, a felony.

14 On December 9th, 2003, Charboneau pleaded guilty but
15 incapable of consenting. On December 23rd, 2003, the state
16 court sentenced Charboneau, then age 44, to 10 years
17 imprisonment. On January 9th, 2004, the state court filed an
18 amended judgment that stated Charboneau had pleaded guilty but
19 mentally ill.

20 The United States Probation Office filed a notice of
21 revocation based on Charboneau's criminal conduct involving the
22 sexual offense. On November 23rd, 2004, the federal court
23 found that Charboneau violated the terms of his supervised
24 release by engaging in new criminal conduct and sentenced
25 Charboneau to 36 months of imprisonment consecutive to a state

1 court sentence and a 24-month term of supervised release to
2 commence upon Charboneau's release from federal imprisonment.

3 On July 8th, 2014, three family members of Charboneau wrote
4 the U.S. Probation officer concerning his possible release.
5 See Government Exhibit 8. The letter stated:

6 "This letter is an attempt to prohibit Blake Charboneau
7 from being released into society. As his family members, we
8 know the type of violent acts Blake has committed and is
9 capable of. This in turn puts us in fear for our safety, the
10 safety of our children and grandchildren and society.

11 "Prior to Blake ever being incarcerated in prison, he
12 engaged in habitual drug use and alcohol consumption. At a
13 very young age, about 14, Blake began to habitually abuse
14 inhalants, such as sniffing gasoline, paint, and anything that
15 would create a high for him. After Blake began his drug use,
16 we noticed how he began to act unusual. Blake would laugh
17 uncontrollably at the TV when there wasn't anything funny about
18 the program. He would talk to himself and wander around in a
19 trancelike state.

20 "His behavior scared our mother, Teresa Charboneau, and
21 this prompted her to try and seek help for him. Blake was
22 admitted to the Jamestown hospital multiple times and our
23 mother attempted to seek any help she could to help Blake. All
24 her attempts failed. Blake continued to abuse inhalants and
25 then began to use marijuana and alcohol. Due to his habitual

1 drug use and mental health, Blake became totally dependent on
2 our parents to care for him in all ways. Blake has never had a
3 job, his own home, nor does he know how to cook for himself or
4 wash his own clothing.

5 "The incident that took place on the Spirit Lake
6 Reservation many years ago involving Blake and his daughter
7 left a shock and fear in our family that is almost
8 indescribable. After the incident, Blake wandered off. The
9 cops later found him sitting elsewhere. Blake didn't know
10 anything, what had happened, nor did he show any remorse for
11 the crime he had just committed on his young daughter. Blake
12 was convicted of raping his daughter and was sentenced to
13 federal penitentiary. The victim has never recovered from the
14 trauma and to this day continues to have mental and emotional
15 issues. The trauma that our family has endured from his act
16 has been heartbreaking and difficult to deal with. Sometimes
17 you never fully heal from this type of trauma because it is so
18 engrained.

19 "Blake concluded his sentence and was due to be released
20 back into society. The victim went to face him at the Devils
21 Lake Law Enforcement Center. In her words, she described the
22 meeting as sick. The victim described how Blake showed no
23 remorse for his actions and told her that he was still in love
24 with her. This prompted the victim to ask he not be released
25 in the state of North Dakota.

1 "Our mother went to visit Blake after our father and uncle
2 had died. Blake had been notified of the deaths, but insisted
3 to our mother that they were still alive. Blake also told our
4 mother that he had been in the fire which had killed nine of
5 our family members. Blake could not have been in the house
6 fire. He was in prison. Again, this conversation took place
7 after Blake had been incarcerated for some time and shows that
8 his mental health is a huge issue and concern.

9 "Blake went to South Dakota where he again raped another
10 human being. Blake was incarcerated and sentenced to prison.

11 "We, as a family, believe Blake is a danger to us and
12 society. We don't feel safe knowing that he will be returned
13 to society free to wander at his will. We, the family members
14 of Blake Charboneau, are not willing to help him reenter
15 society, take care of him or want him around our family, our
16 children or our grandchildren. We request that he be placed in
17 an institution that will protect him and protect society from
18 him. We believe that if he is given the opportunity to be
19 released back into society, you, as the Parole Board, are
20 putting our family, the victim, and society in grave danger
21 because he will hurt someone again. We know him best and we
22 plea with you that you will respect our wishes and place him
23 somewhere where he can't hurt anyone again.

24 "Sincerely, the Charboneau family."

25 Charboneau was scheduled for release from federal custody

1 for his supervised release violation on February 21st, 2016.
2 On December 3rd, 2015, he was certified as sexually dangerous
3 under the Adam Walsh Act. Six witnesses testified at the 4248
4 trial.

5 The first witness was Dr. Carol Holden. Dr. Holden is a
6 BOP clinical psychologist in the Commitment and Treatment
7 Program. Dr. Holden is also Charboneau's treatment provider in
8 the CTP. Dr. Holden testified regarding the philosophy and
9 structure of the CTP and the four phases a detainee must
10 complete before BOP considers the detainee's release.
11 Dr. Holden testified that Charboneau is in Phase 2 of the
12 program. Dr. Holden testified that Charboneau volunteered for
13 treatment in the CTP on February 22nd, 2016. See Government
14 Exhibit 26.

15 Charboneau underwent a series of psychological tests.
16 Charboneau's responses on one such test, the Multiphasic Sex
17 Inventory, demonstrated that he seriously minimized having
18 sexual thoughts prior to committing the violent sexual
19 offenses, attempted to deny knowledge of the fundamental
20 wrongness of his violent sexual assaults, viewed himself as a
21 victim of the justice system, and denied that he had an alcohol
22 abuse problem.

23 On June 13th, 2016, approximately four months after
24 voluntarily entering the CTP, Dr. Holden testified that
25 Charboneau continued to demonstrate many of the same

1 minimizations and rationalizations first detected in his
2 answers to questions on the MSI II. See Government Exhibit 24
3 and Government Exhibit 26.

4 On November 30th, 2016, Dr. Holden assessed Charboneau's
5 treatment needs. Dr. Holden determined that two of
6 Charboneau's treatment needs are substance abuse and sexual
7 entitlement. See Government Exhibit 28. Substance use
8 pertained to Charboneau's historical use and denial of his
9 alcohol overuse. The sexual entitlement pertained to
10 Charboneau's belief that he felt that he was owed sex from
11 women that he believed came on to him or teased him. See
12 Government Exhibit 28.

13 Dr. Holden discussed the dangerous interplay between
14 Charboneau's alcohol overuse and his feelings of sexual
15 entitlement. Dr. Holden also testified that during his
16 treatment with her Charboneau had begun to open up to her and
17 to trust her. Dr. Holden described Charboneau as very
18 reserved. To foster trust and make Charboneau more comfortable
19 communicating with her and CTP staff, Dr. Holden made
20 Charboneau an orderly in the CTP.

21 Further, Dr. Holden testified that, although Charboneau had
22 communicative challenges and had been referred to a
23 neuropsychologist for assessment based on his odd speech
24 pattern, she had developed a relationship with him where she
25 carefully noted his responses to her questions and verified

1 with him that she correctly stated his responses to her
2 questions.

3 Dr. Holden testified that Charboneau complied with her
4 suggestions that he attend weekly Alcohol Anonymous meetings at
5 Butner, but Charboneau still denied that he had an alcohol
6 problem. Regarding the availability of alcohol, Dr. Holden
7 testified that she's aware some prisoners at Butner produce
8 alcohol or hooch. She was not, however, aware that it was
9 available in the Maryland unit other than on one instance. She
10 was not aware that Charboneau had used alcohol on custody at
11 Butner. Dr. Holden also testified that Charboneau seemed
12 sincere in his desire to change his life.

13 On December 9th, 2016, Charboneau spoke to Dr. Holden after
14 a community meeting and disclosed for the first time that he
15 desired to have sexual contact with his victims before
16 committing the alcohol-fueled sex offenses and that he believed
17 he was sexually dangerous. See Government Exhibit 27.

18 Dr. Holden also explained during her testimony that
19 Charboneau misreads social cues and has a sense of sexual
20 entitlement. When intoxicated, alcohol acts as a disinhibitor
21 and he acts out impulsively. He remains in Phase 2 of the CTP
22 as of the time of the trial. He continues to have cognitive
23 distortions even when sober concerning his family, his sexually
24 assaultive behavior, and his lack of an alcohol problem.

25 Dr. Christopher North also testified at the trial. He is a

1 forensic psychologist and a court-appointed examiner in this
2 case. His report and CV are in the record. Dr. North opined
3 in his report, Government Exhibit 3, and testified at trial
4 that Charboneau meets criteria for civil commitment as a
5 sexually dangerous person.

6 In forming his opinion, Dr. North reviewed the written
7 discovery, which includes information concerning Charboneau's
8 criminal history, social history, substance abuse history, and
9 institutional reports. Dr. North also clinically interviewed
10 Charboneau on January 19th, 2016, and considered his range of
11 risk on the Static-99R, an actuarial tool, and analyzed the
12 presence of dynamic risk factors using the Hare Psychopathy
13 Checklist-Revised, PCL-R, and the Structured Risk
14 Assessment-Forensic Version, SRA-FV.

15 During the clinical interview, Charboneau said that he
16 performed oral sex on the 2003 offense victim. Charboneau also
17 claimed to Dr. North that he had had a prior sexual
18 relationship with the victim, an assertion that the victim
19 denies. Charboneau also told Dr. North that from October 11th,
20 2000, until July 12th, 2013, he consumed alcohol while in the
21 community. He did so despite the conditions of his release,
22 which prohibited such use.

23 Additionally, Charboneau told Dr. North that during the
24 period he was in sex offender therapy he did not believe that
25 he had a sexual problem or that he needed sex offender

1 treatment. Charboneau's interview with Dr. North also revealed
2 that he struggles with feelings of inferiority and inadequacy
3 towards women. He also told Dr. North that he does not have a
4 drinking problem and that he believed that he could remain
5 sober even if he did not attend Alcohol Anonymous meetings.

6 As for Prong 1 under the Adam Walsh Act, Dr. North opined
7 that Charboneau had committed or attempted to engage in
8 sexually violent conduct or child molestation.

9 As for Prong 2 under the Adam Walsh Act, Dr. North used the
10 *Diagnostic and Statistical Manual of Mental Disorders, Fifth*
11 *Edition*, DSM-5, and diagnosed Charboneau with alcohol use
12 disorder, severe, in a controlled environment. According to
13 the DSM-5, an individual meets the diagnostic criteria for
14 alcohol use disorder where there is, quote, a problematic
15 pattern of alcohol use leading to clinically significant
16 impairments or distress, end quote, that occurs within a
17 12-month period if at least 2 of the 11 criteria are met.
18 Those 11 criteria are:

19 First, alcohol is often taken in larger amounts or over a
20 longer period than was intended.

21 Second, there is a persistent desire or unsuccessful effort
22 to cut down or control alcohol use.

23 Third, a great deal of time is spent in activities
24 necessary to obtain alcohol, use alcohol or recover from its
25 effects.

1 Four, craving or a strong desire or urge to use alcohol.

2 Five, recurrent alcohol use resulting in a failure to
3 fulfill major role obligations at work, school or home.

4 Six, continued alcohol use despite having persistent or
5 recurrent social or interpersonal problems caused or
6 exacerbated by the effects of alcohol.

7 Seven, important social, occupational or recreational
8 activities are given up or reduced because of alcohol use.

9 Eight, recurrent alcohol use in situations in which it is
10 physically hazardous.

11 Nine, alcohol use is continued despite knowledge of having
12 a persistent or recurrent physical or psychological problem
13 that is likely to have been caused or exacerbated by alcohol.

14 Ten, tolerance, as defined by either of the following: (a)
15 a need for markedly increased amounts of alcohol to achieve
16 intoxication or desired effect, (b) a markedly diminished
17 effect with continued use of the same amount of alcohol.

18 And eleven, withdrawal, as manifested by either of the
19 following: (a) the characteristic withdrawal syndrome for
20 alcohol, (b) alcohol is taken to relieve or avoid withdrawal
21 symptoms.

22 Because Charboneau's access to alcohol in custody is very
23 limited, his alcohol use disorder is designated as in a
24 controlled environment.

25 Dr. North based his diagnosis on Charboneau's

1 well-documented use of alcohol as a child, which developed into
2 a serious addiction that caused Charboneau's admittance into
3 North Dakota's State Hospital eleven times before his 26th
4 birthday. Moreover, Charboneau's 20 alcohol-related arrests
5 and his alcohol-fueled sexual violence further support the
6 diagnosis.

7 Charboneau also lacks independence and stable community
8 ties due to his alcohol consumption. Dr. North opined that
9 Charboneau's life has essentially revolved around drinking,
10 getting in trouble while intoxicated, and serving time in
11 custody.

12 Dr. North also diagnosed Charboneau with severe inhalant
13 use disorder by history based on Charboneau's use of inhalants,
14 such as gasoline, glue, and paint thinners, at an early age.
15 As a result of Charboneau's chronic inhalant use, Charboneau
16 suffered organic brain damage with lasting effect on his
17 cognitive functioning. Dr. North opined that Charboneau's
18 severe inhalant use has stunted his cognitive social,
19 emotional, and sexual development to the sense he ceased
20 developing mentally and emotionally when he was approximately
21 12 or 13 years old. Dr. North opined that Charboneau has never
22 developed a mature adult sexuality.

23 Dr. North also found that a diagnosis of mild
24 neurocognitive disorder is warranted based on Charboneau's
25 inhalant abuse, in possible combination with his alcohol abuse,

1 which has resulted in decline in his level of functioning in
2 one or more cognitive domains and is evident by Charboneau's
3 disorganized thinking and problems with language and verbal
4 expression.

5 Dr. North also opined that Charboneau's alcohol abuse
6 disorder was a serious mental illness abnormality or disorder
7 under the Adam Walsh Act; and that as a result of the disorder,
8 Charboneau would have serious difficulty refraining from
9 engaging in sexually violent conduct or child molestation if
10 released. Dr. North conceded during his testimony that
11 Charboneau does not suffer from a paraphilia under the DSM-5.

12 Dr. North used the Static-99R, an actuarial instrument used
13 to examine static factors that impact an individual's risk of
14 reoffending. He concurred with Dr. Ross, except on Item 2,
15 which asks whether an individual has cohabitated with an
16 intimate partner for two years or more. Whereas Dr. Ross
17 assigned no points for that item, Dr. North found that one
18 point should be assessed, which resulted in a total score of
19 five and placed Charboneau in the above average risk category.

20 Dr. North used the SRA-FV to review additional relevant
21 risk factors. He found that Charboneau showed evidence of
22 intimacy deficits and cited in support his belief that marriage
23 is frightening to him. Dr. North opined that Charboneau showed
24 significant social deviants and unstable lifestyle and poor
25 problem-solving skills. Dr. North also noted Charboneau's

1 astonishing denial that he did not have an alcohol consumption
2 problem.

3 Using the routine sample of the comparable offenders,
4 Dr. North determined that 15 percent of the offenders in the
5 routine sample with a Static 99 score of five reoffended within
6 five years of release from custody. Dr. North noted in his
7 report, however, that he believed that this underestimates the
8 actual recidivism rates because many sex offenders commit
9 undetected and unreported offenses.

10 Dr. North opined that Charboneau's severe alcohol abuse
11 disorder, when coupled with his other cognitive limitations,
12 made him prone to sexually assaulting females when the
13 opportunity arises and he's under the influence. Furthermore,
14 Dr. North noted Charboneau's astonishing assertion that he
15 could stay away from alcohol without any kind of program or
16 support in the community.

17 Dr. North also scored Charboneau on the PCL-R to determine
18 the presence of psychopathy. Charboneau obtained an overall
19 score of 19, which placed him within the moderate range of
20 psychopathy.

21 Dr. North opined that the greatest dynamic factor in his
22 analysis of Charboneau's sexual dangerousness was his denial
23 that he was an alcoholic. Dr. North opined that he had been
24 treating patients with psychological problems for 30 years and
25 that Charboneau's denial that he had a drinking problem

1 represented the most significant level of denial that he had
2 ever seen.

3 Dr. North also examined protective factors that could
4 potentially lessen Charboneau's sexual dangerousness.
5 Dr. North identified protective risk factors to include, one,
6 having been in a community for 10 years without committing a
7 sexual offense; two, having less than 15 years left to live due
8 to an illness or physical problem or condition that would
9 decrease libido, mobility or motivation to reoffend; and,
10 three, very advanced age.

11 Dr. North opined that none of these protective factors
12 applied to Charboneau. Charboneau is 57 years old, is in good
13 health, and does not suffer from any physical or medical
14 problems that decrease his ability sexually to reoffend.
15 Moreover, his age has affected his actuarial scores.
16 Furthermore, Charboneau has not been released into the
17 community since his last violent sexual offense.

18 Dr. North also recognized that Charboneau's two-year term
19 of supervised release could be a protective factor, but that
20 Charboneau had failed on supervised release the last time, had
21 drunk alcohol, and had violently sexually assaulted his victim.
22 Thus, Dr. North did not believe Charboneau's two-year term of
23 supervised release was a protective factor.

24 Dr. North also addressed Charboneau's institutional
25 compliance. See *United States v. Antone*, 742 F.3d 151, 165 to

1 170, Fourth Circuit 2014. Dr. North testified that the record
2 showed that after Charboneau's conviction in 1982 he was
3 imprisoned and that correctional officials considered him a
4 model inmate, but upon his release, he consumed alcohol and
5 violently sexually reoffended. The same pattern emerged in his
6 incarcerations for his other violent sexual offenses.

7 Dr. North testified that Charboneau's history demonstrates
8 that when he is confined in a structured environment, such as
9 at Butner, Charboneau will conform his behavior and not act
10 out, including with respect to alcohol and sexual violence.
11 Dr. North opined, however, that alcohol is an extraordinary
12 disinhibitor with Charboneau, and when he drinks, he drinks to
13 excess and will likely sexually assault a female if the
14 opportunity arises.

15 Dr. Heather Ross is a BOP forensic psychologist. Her CV
16 and report are in the record. Dr. Ross prepared the
17 precertification report for the Certification Review Branch
18 panel's consideration of whether to issue a certificate stating
19 that Charboneau is a sexually dangerous person.

20 Charboneau declined to submit to an interview with
21 Dr. Ross. Dr. Ross reviewed court documents, psychological
22 records, and other documentation, as well as the other expert
23 opinions in the case. Additionally, Dr. Ross reviewed updated
24 BOP reports, including Dr. Holden's clinical notes, and the
25 initial treatment plan and testing report from the CTP.

1 Dr. Ross opined that Charboneau meets criteria for civil
2 commitment as a sexually dangerous person. Dr. Ross found that
3 Charboneau met criteria for Prong 1 of the Adam Walsh Act based
4 on his criminal history, including his history of violent
5 sexual conduct.

6 As for Prong 2, Dr. Ross diagnosed Charboneau with alcohol
7 use disorder in a controlled environment; inhalant use disorder
8 in sustained remission; adult sexual abuse by a nonspouse or
9 nonpartner, perpetrator; and child sexual abuse, perpetrator.
10 Dr. Ross did not diagnose a paraphilia. Dr. Ross's diagnostic
11 impression supporting Prong 2 are contained in her report and
12 she testified about them at the trial.

13 Dr. Ross noted that alcohol abuse has adversely affected
14 every aspect of Charboneau's life. Dr. Ross testified that the
15 diagnosis of alcohol use disorder in a controlled environment
16 constituted a serious mental illness, abnormality or disorder
17 under the Adam Walsh Act in this case. Dr. Ross testified that
18 her findings of adult sexual abuse by nonspouse or nonpartner,
19 perpetrator, and child sexual abuse, perpetrator, did not
20 factor in her analysis regarding whether Charboneau would have
21 serious difficulty in refraining from engaging in sexually
22 violent conduct or child molestation.

23 As for Prong 3, Dr. Ross opined in her report and at trial
24 that Charboneau would have serious difficulty refraining from
25 sexually violent conduct or child molestation if released based

1 on his overuse of alcohol, which exacerbated his impulsiveness.
2 Dr. Ross's report cites Charboneau's lack of social support as
3 evidenced by the exclusionary order issued by his tribe that
4 forbade him from returning to the reservation and the letter
5 that the Charboneau family wrote to the United States Probation
6 office in 2014 stating that they feared Charboneau's release
7 from imprisonment and that they did not want him to return to
8 the community.

9 Moreover, Dr. Ross testified that Charboneau did not have a
10 viable relapse prevention plan and that his two-year term of
11 supervised release would not be a protective factor in this
12 case.

13 Dr. Ross also analyzed static and dynamic factors.
14 Dr. Ross noted that Charboneau's score of four on the
15 Static-99R placed him in the moderate-high risk category. She
16 testified that her score was different than that of the other
17 examiners who used the Static-99R and found a score of five
18 based on risk factor two, whether Charboneau ever lived with a
19 partner for two years, because when she did her records review
20 records did not provide sufficient information and Charboneau
21 declined to be interviewed during this precertification
22 process. Dr. Ross testified that based on her review of the
23 other experts' reports and Charboneau's deposition that she
24 would now assess an additional point, which would bring
25 Charboneau's total score to five on the Static-99R. Dr. Ross

1 testified that the static factors did not adequately represent
2 Charboneau's risk of sexual reoffending because the dynamic
3 risk factors were so profound.

4 To more accurately determine Charboneau's risk, Dr. Ross
5 examined dynamic risk factors and found four robust dynamic
6 risk factors: first, problem-solving skills; second, lifestyle
7 impulsivity, such as alcohol use, low self-control, and
8 irresponsible decisions; three, resistance to rules followed in
9 the community; and four, lack of emotional intimate
10 relationships with adults. Dr. Ross found these four factors
11 to be the most relevant dynamic risk factors applicable to
12 Charboneau when analyzing his risk of reoffending sexually. As
13 Dr. North did, Dr. Ross acknowledged that Charboneau complied
14 with the rules while in a structured environment, but fails to
15 do so when in a nonstructured environment because of alcohol
16 and his other mental limitations.

17 Dr. Ross also considered federal regulations relevant to
18 determining sexual dangerousness. Dr. Ross testified that
19 updated information contained in Dr. Holden's clinical notes
20 revealed that Charboneau did not appreciate the wrongfulness of
21 his conduct because he minimized, justified, and blamed others.
22 This reflects Charboneau's cognitive distortions about his
23 condition and situation.

24 Dr. Ross also testified that another relevant factor in
25 Charboneau's case was his lack of successful completion in sex

1 offender treatment. Regarding sex offender treatment, Dr. Ross
2 noted that he failed to complete such treatment in 2003 and
3 testified that she was aware that Charboneau was now in sex
4 offender treatment in CTP, but that he was still minimizing and
5 denying his offenses.

6 Dr. Ross opined that in addition to sex offender treatment
7 she believed Charboneau also needed to successfully complete
8 substance abuse treatment and that Charboneau's continued
9 denial that he had an alcohol problem constituted a cognitive
10 distortion of his condition and situation.

11 Dr. Ross opined that Charboneau's inability to control his
12 conduct while under supervision in the community was an
13 important fact because he committed three violent sexual
14 offenses -- 1982, 1988, and 2003 offenses -- while he was
15 likely to be caught. Additionally, that based on Dr. Zinik's
16 clinical interview with Charboneau, Charboneau committed the
17 1987 offense, while likely to be caught, because the victim met
18 Charboneau the night before he attempted to rape her. Dr. Ross
19 further testified that his Static-99R score reflected an
20 individual in the moderate-high range for sexual offense.

21 Dr. Ross also considered protective factors. She noted in
22 her report that the protective factors included things such as
23 age, medical factors, and time in the community, but that they
24 did not apply in this case because they did not suggest that
25 Charboneau could not perform sexually at his age and that age

1 was already factored in the Static-99R score. Additionally, no
2 evidence suggested that Charboneau suffered from any physical
3 limitations that would minimize his ability to perform sexually
4 or to reoffend.

5 Moreover, Charboneau had not spent significant time in the
6 community offense-free and being on supervision had not acted
7 as a deterrent that prevented him from committing violent,
8 alcohol-fueled sexual crimes. Dr. Ross testified that
9 Charboneau's two-year term of supervised release would not
10 lessen his sexual dangerousness in that he had reoffended
11 sexually while on supervision, including his sexual violence in
12 2003.

13 Dr. Ross also testified that a well-developed release
14 prevention plan would be beneficial, but that based on her
15 review of Charboneau's deposition and the other evidence in the
16 record, he merely intended to do the same thing he had done
17 when he was released previously, except this time he stated
18 that he would leave alcohol alone. Dr. Ross opined that this
19 was not an adequate release plan to be protective because it
20 relied on Charboneau's hope that he would avoid alcohol.

21 Dr. Ross also testified that, although strong community
22 support would benefit Charboneau if released, Charboneau had no
23 community support, as evidenced by the fact that his tribe
24 forbade him from returning and that his family essentially had
25 disowned him.

1 Dr. Ross also considered Charboneau's institutional
2 behavior. She noted that while institutionalized in a
3 structured environment Charboneau behaved appropriately at
4 Butner and at other places. This factor, however, did not
5 lessen his sexual dangerousness in Dr. Ross's opinion because
6 he repeatedly reoffended upon release from imprisonment when he
7 was no longer in a highly structured environment.

8 Dr. Gary Zinik testified. His report and CV are in the
9 record. Dr. Zinik opined that Charboneau meets the criteria
10 for civil commit as a sexually dangerous person. Dr. Zinik
11 conducted a record review, interviewed Charboneau on February
12 18th, 2016, and analyzed static and dynamic risk factors
13 concerning Charboneau's risk of reoffending sexually, and also
14 analyzed protective factors that potentially lessen
15 Charboneau's risk of reoffending. Additionally, Dr. Zinik
16 reviewed Dr. Holden's clinical notes and initial treatment plan
17 and testing report, which were also submitted in evidence as
18 Exhibits 24 and 26 and 27, and considered all the other
19 opinions of the experts in this case.

20 Charboneau told Dr. Zinik during the clinical interview
21 that he was not related to the 2003 victim. Charboneau also
22 denied that he grabbed the 2003 victim and attempted to
23 sexually assault her. Charboneau admitted that he performed
24 cunnilingus on the victim, but claimed that he had done so in
25 the past and it was consensual. Charboneau also stated that he

1 was aroused sexually while drunk and felt that it was normal
2 and that there was nothing wrong with it.

3 As for Charboneau's substance abuse problem, Charboneau
4 told Dr. Zinik that he believed he did not have an alcohol
5 problem, that he could leave alcohol alone, and that he could
6 control himself.

7 As for Prong 1, Dr. Zinik determined that Charboneau had
8 committed or attempted to engage in sexually violent conduct or
9 child molestation based on his sexually violent conduct in
10 1982, 1987, 1988, and 2003.

11 As for Prong 2, Dr. Zinik diagnosed Charboneau with alcohol
12 use disorder, severe, in a controlled environment; inhalant use
13 disorder, severe, in sustained remission; and inhalant-induced
14 mild neurocognitive disorder.

15 Dr. Zinik described alcohol as Charboneau's drug of choice
16 and most persistent addiction. Dr. Zinik testified that
17 Charboneau had consistently denied that he had an alcohol
18 problem. In addition to the reasons cited in his report,
19 Dr. Zinik discussed Charboneau's alcohol dependence. Due to
20 Charboneau's multiple neurocognitive problems, the free world
21 is a very confusing place to Charboneau, Dr. Zinik explained.
22 It makes him anxious and confused. Alcohol relaxes Charboneau
23 and, unfortunately for the victims of his sexual offenses,
24 provides liquid courage to become aroused and to approach
25 women. His multiple neurocognitive limitations then combined

1 with the alcohol to create a perfect storm and a lack of
2 emotional control.

3 In addition, Dr. Zinik found that Charboneau also qualified
4 for a diagnosis of inhalant use disorder. Dr. Zinik found that
5 Charboneau met criteria for a diagnosis of mild neurocognitive
6 disorder based on years of inhalant use that was likely
7 compounded by his alcohol use. Additionally, Dr. Zinik opined
8 that a diagnosis of inhalant-induced mild neurocognitive
9 disorder was warranted based on Charboneau's inhalant and
10 alcohol use, which resulted in a decline from Charboneau's
11 previous level of functioning in one or more cognitive domains,
12 as evidenced by his disorganized thinking and problems with
13 verbal expression and language. Dr. Zinik also testified that
14 he determined that the disorder was mild because Charboneau's
15 cognitive deficits do not appear to interfere with his daily
16 living activities, particularly in a structured environment.

17 Additionally, Dr. Zinik diagnosed Charboneau with other
18 specified personality disorder, with schizotypal and schizoid
19 features. According to the *Diagnostic and Statistical Manual*
20 *of Mental Disorders, Fifth Edition*, DSM-5, personality
21 disorders are characterized by an enduring pattern of inner
22 experience and behavior that began at the onset of adolescence
23 or early adulthood and stabilized over time and deviates
24 decidedly from an individual's culture, is pervasive and
25 inflexible, and leads to distress and impairment. If all the

1 criteria for one personality disorder are not met or combined
2 features of one or more personality disorders are prominent,
3 then a diagnosis of other personality disorder is warranted.

4 Schizotypal personality disorder is characterized by social
5 and interpersonal deficits that result in acute discomfort with
6 and reduced capacity for close relationships. An individual
7 suffering from schizotypal personality disorder experiences
8 cognitive and perceptual distortions and exhibits exocentric
9 behavior. They also are unable to form emotional attachments
10 with others or sustain relationships due to a belief that
11 others harbor them ill will. Moreover, some individuals, like
12 Charboneau, demonstrate strange speech mannerisms. Further,
13 they might react abnormally in conversations, not respond or
14 even talk to themselves. They may also misinterpret situations
15 as having unusual meanings to them.

16 Schizoid personality disorder is a mental disorder that is
17 characterized by a pervasive pattern of detachment from social
18 relationships and restricted range of expression of emotions in
19 interpersonal situations. Individuals suffering from schizoid
20 personality disorder tend to be loners, secretive, cold, and
21 apathetic.

22 According to Dr. Zinik, Charboneau demonstrates a mixed
23 personality disorder that includes both schizotypal and
24 schizoid features. Dr. Zinik opined that the schizotypal
25 features Charboneau displayed include odd beliefs, unusual

1 | perceptions, odd thinking, suspicion and paranoid behavior,
2 | inappropriate affect, lack of close friends, and excessive
3 | social anxiety.

4 | Dr. Zinik also opined that the schizoid features Charboneau
5 | displayed include a solitary behavior, lack of pleasure in
6 | social activities, emotional coldness, detachment, and lack of
7 | interest in sexual experience with others. Dr. Zinik testified
8 | that although Charboneau engaged in solitary behavior and also
9 | demonstrated little interest in sexual experience with others,
10 | it did not lessen his sexual dangerousness. Dr. Zinik
11 | explained and the record demonstrates that Charboneau had been
12 | a loner all of his life, yet had committed four alcohol-fueled,
13 | violent sexual assaults where alcohol acted as a disinhibitor,
14 | relaxed him, and fueled a sexual desire. Charboneau is afraid
15 | and embarrassed about sex, Dr. Zinik opined. However, he still
16 | can become sexually aroused and is sexually attracted to women,
17 | but is unable to control and manage his sexual feelings,
18 | particularly when he's under the influence of alcohol.

19 | Dr. Zinik opined that based on the interplay of
20 | Charboneau's very serious mental illnesses, abnormalities or
21 | disorders Charboneau would have serious difficulty in
22 | refraining from engaging in sexually violent conduct or child
23 | molestation. This, as a result of a causation element, is due
24 | to his alcohol, his having sexual arousal which, coupled with
25 | his organic dysfunction and schizotypal and schizoid features,

1 prevent Charboneau from understanding and coping with his
2 sexual arousal. Consequently, Charboneau is overwhelmed and
3 acts impulsively, resulting in his repeated violent,
4 alcohol-fueled sexual offending.

5 Dr. Zinik used the Static-99R to determine static risk
6 factors and determined that Charboneau scored a five, which
7 fell in the above average score on the instrument. Dr. Zinik
8 testified that the static score did not adequately represent
9 Charboneau's risk of sexual recidivism based on his alcoholism
10 and failure to complete both substance abuse and sex offender
11 treatment.

12 In order to better assess Charboneau's risk of reoffending,
13 Dr. Zinik administered the Sexual Violence Risk-20, an
14 instrument that measures 20 risk factors for offenders who have
15 been convicted or are alleged to have committed a sexual
16 offense. The SVR-20 has predictive accuracy. Dr. Zinik found
17 that Charboneau met 15 of the 20 risk factors, which placed him
18 in the high risk category. Dr. Zinik opined that these factors
19 include Charboneau's lack of emotional intimate relationships
20 with adults, lifestyle impulsiveness, and poor problem-solving
21 skills.

22 Dr. Zinik also considered federal regulations used to
23 determine sexual dangerousness. Dr. Zinik found a number of
24 these factors were met, as evidenced by Charboneau's inability
25 to control his conduct while on supervised release and living

1 in a supportive, noncustodial environment, and participating in
2 sex offender treatment and substance abuse treatment. Further,
3 Charboneau committed sexually violent offenses, while likely to
4 get caught, and that all of his victims knew him because they
5 were related to him or one had met him the night before.

6 Dr. Zinik also considered Charboneau's admission that during
7 the 1988 rape he felt the loss of control and Charboneau's
8 statement that during the 2003 attempted rape, which Charboneau
9 pleaded guilty but mentally ill to sexual conduct with a person
10 incapable of consent, that he was out of control.

11 Additionally, Dr. Zinik considered Charboneau's statement to
12 Dr. Holden that he was sexually dangerous.

13 Dr. Zinik, who also still treats sex offenders as part of
14 his practice, testified that it was significant that Charboneau
15 had never completed sex offender treatment or substance abuse
16 treatment. He also concurred with Dr. Holden that it would be
17 detrimental to Charboneau's treatment if the Court were to
18 effectively remove Charboneau from treatment at this time.

19 Dr. Zinik further testified that he believed Charboneau needs
20 substance abuse treatment, in addition to sex offender
21 treatment, and that Charboneau's denial that he has an alcohol
22 problem constitutes a cognitive distortion and affects his
23 ability to successfully complete substance abuse treatment.

24 Dr. Zinik testified that he reviewed Charboneau's
25 institutional behavior as a possible protective factor that

1 will reduce his risk of reoffending sexually. Dr. Zinik
2 acknowledged that Charboneau is not diagnosed with a paraphilia
3 and also acknowledged that Charboneau did not have a history of
4 acting out while institutionalized during his present
5 incarceration or any of his previous incarcerations, but that
6 such a history did not render Charboneau less sexually
7 dangerous. Dr. Zinik noted that each time Charboneau was
8 released into the community from a structured environment
9 Charboneau -- Charboneau consumed alcohol and committed both
10 general offenses and violent sexual offenses.

11 Dr. Zinik testified that he also examined protective
12 factors that would reduce Charboneau's risk of sexual
13 reoffending. These factors included his age and health.
14 Dr. Zinik found that these factors would not reduce
15 Charboneau's risk of reoffending because Charboneau is in
16 physically good health, has not lived in the community for a
17 significant period of time without reoffending and, although he
18 is older, he still has an active sex drive.

19 Dr. Zinik opined that, although Charboneau was beginning to
20 make progress with Dr. Holden, Charboneau essentially was the
21 same person who committed the act of sexual violence in 2003.

22 Finally, Dr. Zinik opined that although he did not find the
23 presence of a paraphilia it did not render Charboneau less
24 sexually dangerous. Dr. Zinik opined that Charboneau's alcohol
25 abuse disorder and other specified personality disorders with

1 schizotypal and schizoid features acted synergistically and
2 caused Charboneau to have serious difficulty in refraining from
3 engaging in sexually violent conduct or child molestation if
4 released. Alternatively, Dr. Zinik opined that Charboneau
5 would still be sexually dangerous even if he only relied on the
6 alcohol use disorder diagnosis as the sole serious mental
7 illness abnormality or disorder at Prong 2.

8 Blake Charboneau also testified during the trial. He is 57
9 years old and grew up on a reservation. He is Catholic and
10 attends a weekly Bible study group in the BOP. He testified
11 that when he committed the sexual offenses in 1982, 1987, 1988,
12 and 2003 he was under the influence of alcohol. He testified
13 that he has been sober during his past 13 years of
14 incarceration and that he feels badly about sexually assaulting
15 his victims. Charboneau testified that he began attending AA
16 meetings at Butner in March 2016. He also testified that he
17 would not ever consume alcohol again if released and would not
18 ever sexually assault anyone again if released.

19 Charboneau also testified that, except for one minor
20 infraction during his 13 years of incarceration, he has
21 conformed to prison rules and regulations. Charboneau also
22 agreed that he was also considered a model prisoner after he
23 was incarcerated on his previous convictions, but upon his
24 release, he ultimately got drunk and committed other sexually
25 violent offenses. Charboneau also conceded that he committed

1 his most recent sexually violent offense while drunk, on
2 supervision, and enrolled in sex offender treatment.

3 As for sex offender treatment, Charboneau admitted that
4 before the 2003 violent sexual offense he intended to quit sex
5 offender treatment. He also stated that he thought the CTP
6 program was helping him. He understands that when he drinks
7 alcohol he loses control. He also admitted for the very first
8 time at trial in this case that he did have a problem with
9 alcohol. He said he wanted to admit that he had a problem with
10 alcohol before the trial, but he was afraid. He said if he was
11 released he thought he had the power to not drink alcohol.

12 Dr. Plaud, Joseph Plaud, also testified at trial.
13 Dr. Plaud's CV and report are in the record. Dr. Plaud opined
14 that as to Prong 1 that prong had been met based on
15 Charboneau's conduct underlying the 1982, 1987, 1988, and 2003
16 violent sexual offenses.

17 As for Prong 2, Dr. Plaud opined that Charboneau met the
18 diagnostic criteria under the DSM-5 for alcohol abuse disorder,
19 severe, in a controlled environment and inhalant use disorder,
20 severe, in sustained remission. Unlike Drs. North, Ross, and
21 Zinik, Dr. Plaud found that alcohol use disorder in
22 Charboneau's case did not qualify as a serious mental illness,
23 abnormality or disorder under the Adam Walsh Act. Thus,
24 Dr. Plaud opined that the Government had not met its burden of
25 proof on Prong 2. However, Dr. Plaud also testified that the

1 diagnosis of alcohol abuse disorder theoretically could qualify
2 as a serious mental illness, abnormality or disorder under the
3 Adam Walsh Act, but that it did not apply in this case. He
4 particularly noted that he would have expected more instances
5 of alcohol-fueled, sexually violent crimes than the four
6 alcohol-fueled, sexually violent crimes Charboneau had
7 committed.

8 As for Prong 3, Dr. Plaud opined that the Government had
9 not met its burden of proof on Prong 3. In support, Dr. Plaud
10 said in the absence of a sexually based paraphilia diagnosis,
11 and also reasoned that because Charboneau is 57 years old, he
12 closely aligns with a comparable group of offenders who are age
13 60 and above whose risk of sexual offending is reduced.

14 Dr. Plaud conducted a statistical risk analysis by scoring
15 Charboneau on the Static-99R. Dr. Plaud found that Charboneau
16 scored a five on the instrument and used the routine sample of
17 comparable offenders and determined that individuals in that
18 group had a 15.2 percent chance of sexually reoffending within
19 five years.

20 Dr. Plaud also performed additional testing. He used an
21 objective psychological personality screening inventory
22 assessment, the IPDE, to assess the presence of personality
23 disorders. Although the results of the screening questionnaire
24 indicated no major cause of personality disorder, Dr. Plaud
25 found that there was evidence of schizoid and histrionic

1 personality disorders. Dr. Plaud disagreed with the other
2 expert witnesses about the significance of dynamic factors in
3 this case, such as poor problem-solving, compliance with
4 supervision, and denial of having an alcohol problem.
5 Dr. Plaud acknowledged, however, that multiple dynamic risk
6 factors were present.

7 He found that Charboneau displayed excellent general and
8 sexual behavioral control during his incarceration. He also
9 testified that a review of Charboneau's institutional behavior
10 demonstrated that while incarcerated in a structured
11 environment both at Butner and at other institutions Charboneau
12 complied with rules and regulations, but when released into the
13 community in a less structured environment, he consumed alcohol
14 and ultimately violently sexually offended. Dr. Plaud also
15 acknowledged that although prison-made alcohol is available,
16 Charboneau's deposition testimony revealed that he did not have
17 ready access to prison-made alcohol.

18 Dr. Plaud acknowledged that, given Charboneau's long
19 history of alcohol abuse, there is some probability that he
20 will abuse alcohol if released. Dr. Plaud also testified that
21 if Charboneau drank he might become drunk; and if drunk, he
22 might commit offenses. Dr. Plaud testified, however, that he
23 could not opine that Charboneau would commit a violent sexual
24 crime. Dr. Plaud also cited Charboneau's attendance at AA
25 meetings at Butner as a positive factor for Charboneau and

1 believed that Charboneau's remaining two-year term of
2 supervised release was a protective factor.

3 As for enrollment in sex offender treatment, Dr. Plaud
4 recognized that he had been enrolled in that treatment.
5 Dr. Plaud opined that Charboneau was not of a proper mind-set
6 in 2002 to 2003 to benefit from that treatment.

7 As for Charboneau's participation in CTP and the importance
8 of maintaining a therapeutic alliance with Dr. Holden,
9 Dr. Plaud testified that Charboneau could receive adequate
10 outpatient sex offender treatment. As for Dr. Holden's
11 testimony that Charboneau told her that he was sexually
12 dangerous, Dr. Plaud opined that Charboneau tended to agree
13 with whatever is placed before him and, because CTP is a sex
14 offender treatment program for sexually dangerous persons,
15 Charboneau probably simply adopted the belief that he was
16 sexually dangerous.

17 As for the Court's conclusions of law, the Government seeks
18 the commitment of Charboneau pursuant to the Adam Walsh Child
19 Protection Act of 2006. The Government may seek civil
20 commitment of certain individuals in the custody of federal
21 Bureau of Prisons who are determined to be sexually dangerous
22 persons.

23 To demonstrate an individual should be civilly committed
24 under Section 4248, the Government must prove three elements by
25 clear and convincing evidence: First, Charboneau has

1 previously engaged or attempted to engage in sexually violent
2 conduct or child molestation; second, Charboneau currently
3 suffers from a serious mental illness, abnormality or disorder;
4 and third, as a result of such a condition, he would have
5 serious difficulty in refraining from sexually violent conduct
6 or child molestation if released.

7 See *United States v. Perez*, 752 F.3d 398, 407, Fourth
8 Circuit, 2014; *United States v. Antone*, 742 F.3d 151, 158,
9 Fourth Circuit, 2014; *United States v. Heyer*, 740 F.3d 284, 291
10 to 292, Fourth Circuit, 2014; *United States v. Wood*, 741 F.3d
11 417, 419, Fourth Circuit, 2013; *United States v. Bolander*, 722
12 F.3d 199, 206, Fourth Circuit, 2013; *United States v. Springer*,
13 715 F.3d 535, 538 Fourth Circuit, 2013; *United States v.*
14 *Caporale*, 701 F.3d 128, 130, Fourth Circuit, 2012; *United*
15 *States v. Wooden*, 693 F.3d 440, 442, Fourth Circuit, 2012;
16 *United States v. Francis*, 686 F.3d 265, 268, Fourth Circuit,
17 2012; *United States v. Hall*, 664 F.3d 456, 461, Fourth Circuit,
18 2012; *United States v. Comstock*, 627 F.3d 513, 515, 516, Fourth
19 Circuit, 2010.

20 As for Prong 1, the Court finds that the Government has
21 proven by clear and convincing evidence that Charboneau has
22 engaged or attempted to engage in sexually violent conduct or
23 child molestation. Drs. North, Ross, Zinik, and Plaud all
24 opined that this prong is satisfied based on the conduct
25 underlying Charboneau's 1982, 1988, and 2003 convictions and

1 the conduct underlying his 1987 attempted rape. This Court
2 agrees and finds the Government has met Prong 1 by clear and
3 convincing evidence.

4 As for Prong 2, the Court also finds that the Government
5 has established by clear and convincing evidence that
6 Charboneau suffers from serious mental illnesses, abnormalities
7 or disorders. On Prong 2, the Court finds Dr. Zinik's analysis
8 to be the most compelling. As discussed, Dr. Zinik reviewed
9 the records, interviewed Charboneau, and considered all the
10 expert opinions in the case. His report and testimony were
11 compelling and complete. His report recounts in great detail
12 both the records review and his interview and clinical
13 impressions of Charboneau. Dr. Zinik found that Charboneau met
14 criteria for the following four diagnoses from the DSM-5:
15 first, alcohol use disorder, severe, in a controlled
16 environment; second, inhalant use disorder, severe, in a
17 sustained remission; third, inhalant-induced mild
18 neurocognitive disorder; and, fourth, other specified
19 personality disorder with schizotypal and schizoid features.
20 Dr. Zinik then persuasively explained each mental disorder
21 afflicting Charboneau.

22 As for the diagnoses of alcohol use disorder, severe, in a
23 controlled environment and inhalant use disorder, severe, in
24 sustained remission and inhalant-induced mild neurocognitive
25 disorder, Dr. Zinik explained that the essential features of a

1 substance abuse disorder is a cluster of cognitive, behavioral,
2 and physiological symptoms indicating that the individual
3 continues using a psychoactive substance, drugs or alcohol,
4 despite significant substance-related problems.

5 Dr. Zinik explains that Charboneau has a severe inhalant
6 use disorder by history beginning at age 12 and lasting until
7 his 20s -- into his late 20s. During that time he repeatedly
8 sniffed inhalants, such as gasoline, glue, paint thinner, that
9 likely resulted in organic brain damage with lasting effects,
10 thus the additional diagnosis of inhalant-induced mild
11 neurocognitive disorder. Charboneau has little memory of his
12 childhood and reported that he would blackout and wake up at a
13 different age. He was told about the disastrous effects of his
14 inhalant behavior during incarceration and it appears that he
15 stopped, quote, huffing, end quote, the street term for
16 inhalant use, in his late 20s. Therefore, his inhalant use
17 disorder is in sustained remission.

18 Dr. Zinik also explained that Charboneau continued to
19 consume alcohol and marijuana. He used marijuana during his
20 last probation, but it is unknown whether he reached the
21 threshold of a substance abuse disorder with respect to
22 marijuana. On the other hand, Dr. Zinik persuasively opined
23 that alcohol is Blake Charboneau's drug of choice and his most
24 persistent addiction.

25 Charboneau first drank beer with his parents as a child and

1 developed a serious drinking problem during his teens. As
2 discussed, he was admitted to North Dakota State Hospital
3 eleven times before age 26 with admissions being related to
4 inhalant abuse and alcohol abuse. He's been arrested over 20
5 times on alcohol-related matters and all four of his documented
6 violent sexual assaults were committed when he was drunk. He's
7 been unable to live independently or exhibit any stability in
8 the community due to his heavy drinking. He's diagnosed with
9 alcohol abuse disorder because his life essentially has
10 revolved around drinking, getting into trouble, and serving
11 time. Since he does not have access to alcohol in custody, his
12 alcohol abuse disorder is currently designated as, quote, in a
13 controlled environment.

14 Dr. Zinik also explained that Charboneau meets criteria for
15 mild neurocognitive disorder due to years of inhalant abuse,
16 possibly compounded by years of heavy drinking of alcohol.
17 This diagnosis is given to individuals who show evidence of
18 mild neurocognitive decline from a previous level of
19 functioning in one or more cognitive domains.

20 For Charboneau, his disorder is evident by episodes of
21 disorganized thinking and loose associations and problems with
22 verbal expressions and language. Because Charboneau generally
23 keeps to himself and avoids social contact, his cognitive
24 deficits may not appear obvious from casual observation, but
25 Dr. Zinik opined that his difficulty organizing and verbally

1 expressing his thoughts were readily apparent during the
2 clinical interview when Charboneau had to answer open-ended
3 questions. At times Charboneau's thinking became rambling and
4 illogical and characterized by strange religious themes. His
5 cognitive deficits do not appear to interfere with his
6 activities of daily living and therefore Dr. Zinik opined that
7 they were mild in nature.

8 As for Dr. Zinik's diagnosis of personality disorder with
9 schizotypal and schizoid features, Dr. Zinik was the only
10 expert to make this diagnosis, and his explanation of the
11 diagnosis was compelling and consistent with the unique record
12 in this case. Dr. Zinik explained in his report in detail
13 that, according to the DSM-5, a personality disorder is an
14 enduring pattern of inner experience and behavior that deviates
15 markedly from expectations of the individual's culture. It's
16 pervasive and inflexible, has an onset in adolescence or early
17 adulthood, is stable over time and leads to distress or
18 impairment. Personality disorders or character disorders
19 consist of long-term dysfunctional ways of behaving. When
20 symptoms do not fully meet the criteria for any one personality
21 disorder or combined features of more than one personality
22 disorder are prominent, the, quote, other specified personality
23 disorder is diagnosed, according to Dr. Zinik.

24 According to the DSM-5, schizotypal personality disorder is
25 a mental disorder characterized by social and interpersonal

1 deficits that result in acute discomfort with, and reduced
2 capacity for, close relationships. It is also characterized by
3 cognitive or perceptual distortions and eccentricities of
4 behavior. People with schizotypal personality disorder have
5 severe social anxiety and odd beliefs. They're typically
6 unable to form emotional attachments with others or sustain
7 relationships because they believe others harbor negative
8 thoughts toward them. Peculiar speech mannerisms, strange
9 beliefs, and odd modes of dress are also diagnostic signs of
10 this disorder, according to Dr. Zinik. In some cases, people
11 with schizotypal personality disorder may react oddly in
12 conversation, not respond or talk to themselves. They
13 frequently misinterpret situations as being odd or having
14 unusual meaning for them.

15 According to the DSM-5, schizoid personality disorder is a
16 pervasive pattern of detachment from social relationships and a
17 restricted range of expression of emotions in interpersonal
18 settings. It is characterized by tendencies toward a solitary
19 lifestyle, secretiveness, emotional coldness, and apathy,
20 according to Dr. Zinik. People who have this condition often
21 appear to be socially isolated and loners. At the same time,
22 people with schizoid personality disorder may have an elaborate
23 internal fantasy world that they ever rarely expose.

24 Dr. Zinik explained persuasively why Charboneau has a mixed
25 personality disorder with the following schizotypal and

1 schizoid features including odd beliefs, superstitions or
2 magical thinking that influence behavior and are consistent
3 with cultural norms, schizotypal; unusual perceptual
4 experiences, including bodily illusions, schizotypal; odd
5 thinking and speech, schizotypal; suspiciousness or paranoid
6 ideation, schizotypal; inappropriate or constricted affect,
7 schizotypal; lack of close friends or confidants, other than
8 first-degree relatives, schizotypal; excessive social anxiety
9 that does not diminish with familiarity and tends to be
10 associated with paranoid fears, schizotypal; almost always
11 choosing solitary activities, schizoid; takes pleasure in few,
12 if any, activities, schizoid; shows emotional coldness,
13 detachment or flattened affectivity, schizoid; has little, if
14 any, interest in having sexual experience with another person,
15 schizoid.

16 Dr. Zinik's opinion appears consistent with the opinion of
17 Dr. McKee, who is discussed in Dr. Ross's report at Government
18 Exhibit 5, page 6, who diagnosed Charboneau in 1982 with
19 schizoid personality disorder. In crediting Dr. Zinik's
20 opinion, the Court recognized that Dr. Ross ruled out the
21 diagnosis at page 15 of her report and that Dr. Plaud's report
22 and testimony revealed some evidence of schizoid and histrionic
23 personality disorder, but that he ruled out the diagnosis.

24 The Court credits the opinion of Dr. Zinik. Dr. Zinik
25 persuasively opined that Charboneau's substance use disorders,

1 alcohol and inhalants, inhalant-induced mild neurocognitive
2 disorder, and schizotypal-schizoid personality disorder are
3 interrelated and additive. Charboneau abused inhalants and
4 alcohol during his formative years, his early teens, mid-20s,
5 which damaged his brain, impaired his cognitive development,
6 and arrested his emotional maturation and personality
7 development.

8 Charboneau, according to Dr. Zinik, stated that he had no
9 interest in marriage and avoided sexual opportunities with
10 women. In the past, sex with women made him feel embarrassed.
11 As Dr. Zinik noted, one feature of schizoid personality
12 disorder is having little, if any, interest in sexual
13 experience with others, which, Dr. Zinik explains,
14 characterizes Charboneau.

15 On the other hand, this might suggest that Charboneau would
16 refrain from sexually violent conduct and lower his risk to
17 commit sexual crimes. However, Dr. Zinik persuasively
18 explained that quite the opposite was true in this unique case.
19 Charboneau is afraid of women and embarrassed about sex. He's
20 conflicted about sexual experience, whether it's with women or
21 masturbation. However, he's not asexual, that is, devoid of
22 sexual feelings and desires. He is erotically attracted to
23 women and gets sexually aroused and still masturbates, albeit
24 reluctantly.

25 His sexual anxiety, Dr. Zinik explained, and the fact that

1 he has no ability to manage and control sexual feelings when
2 they do occur, especially under the influence of alcohol, makes
3 him more sexually dangerous, according to Dr. Zinik. Thus,
4 Dr. Zinik opined, and this Court agrees, that Charboneau
5 suffers from a combination of serious mental disorders that
6 meet criteria under Prong 2 of the Adam Walsh Act. This Court
7 finds the Government has proven Prong 2 by clear and convincing
8 evidence.

9 Alternative. The Government presented the testimony of
10 Drs. North, Ross, and Dr. Zinik in the alternative. Dr. Zinik
11 opined in the alternative to establish that Charboneau also
12 suffers from a single serious mental illness, abnormality or
13 disorder, to wit: alcohol use disorder. The Court also
14 credits the testimony of these three experts and also finds by
15 clear and convincing evidence that Charboneau suffers from
16 alcohol use disorder, severe, in a controlled environment;
17 inhalant use disorder, severe, in sustained remission; and
18 inhalant-induced mild neurocognitive disorder.

19 In this unique case and in the alternative, the Court finds
20 that alcohol use disorder, severe, in a controlled environment
21 is a serious mental illness, abnormality or disorder. The
22 Court finds that the opinions of Drs. North, Ross, and Zinik in
23 the alternative that Charboneau's alcohol use disorder, severe,
24 in a controlled environment qualifies as a serious mental
25 illness, abnormality or disorder are more persuasive that

1 Dr. Plaud's opinion that such a diagnosis does not qualify in
2 this case. See *Caporale*, 701 F.3d at 135 to 137.

3 As discussed, law enforcement officers repeatedly have
4 jailed Charboneau for alcohol-related offenses, including
5 public intoxication, liquor violations, and disorderly conduct.
6 The records show that Charboneau's alcohol abuse in the
7 community was pervasive and that he committed the four sexually
8 violent offenses while severely intoxicated. The overwhelming
9 evidence in this case demonstrates that Charboneau's alcohol
10 abuse, again coupled with all these other issues that he has,
11 even putting aside Dr. Zinik's additional diagnosis, resulted
12 in interpersonal difficulties that included estrangement from
13 his family and tribe.

14 Moreover, the strength of the disorder is such that
15 Charboneau admitted eventually that when he raped his
16 10-year-old daughter he lost control and should not have raped
17 her, and that during his 2003 sexual assault of another
18 relative he lost control and should not have orally copulated
19 the victim. Likewise, the experts explained at length why the
20 diagnosis applied to Charboneau and why it met Prong 2 in the
21 case.

22 The Court thus finds that, in this unique case, in the
23 alternative alcohol abuse disorder, severe, in a controlled
24 environment is a serious mental illness, abnormality or
25 disorder. Notably, in *Caporale*, the Fourth Circuit held that

1 the Adam Walsh Act's reference to, quote, serious mental
2 illness, abnormality or disorder, end quote, is not limited to
3 those disorders identified in the DSM. See *Caporale*, 701 F.3d
4 at 136.

5 As a corollary, *Caporale* also teaches that some mental
6 illnesses, abnormalities or disorders identified in the DSM,
7 such as alcohol use disorder, are not categorically excluded
8 from qualifying as a serious mental illness, abnormality or
9 disorder. See *id.* at 135 through 137. Rather, *Caporale*
10 teaches that a court must determine on a case-specific basis
11 whether the diagnosis at issue with respect to the individual
12 at issue constitutes a serious mental illness, abnormality or
13 disorder within the meaning of the Adam Walsh Act. See *id.*
14 See also *Kansas v. Crane*, 534 U.S. 407, 413, 2002; *Springer*,
15 715 F.3d at 546.

16 Here the Court does find by clear and convincing evidence
17 that this diagnosis meets Prong 2.

18 As for Prong 3, the Government also has proven by clear and
19 convincing evidence that, as a result of his serious mental
20 illnesses, abnormalities or disorders, Charboneau would have
21 serious difficulty in refraining from sexually violent conduct
22 or child molestation if released. The Court again credits the
23 testimony and opinions of Dr. Zinik on this issue. The Court
24 also credits the testimony of Dr. Holden that Charboneau
25 admitted to her that he was sexually dangerous. See Government

1 Exhibit 27.

2 Again, as discussed, the Court considers Dr. Zinik's expert
3 testimony in this case to be the most persuasive expert
4 testimony among all the experts. Alternatively as to Prong 3,
5 the Court also credits the testimony of Drs. North and Ross and
6 the alternative conclusion of Dr. Zinik that even if the Court
7 were only to consider the alcohol use disorder, severe, as the
8 only serious mental illness, abnormality or disorder that Prong
9 3 is still satisfied; and that as a result of that serious
10 mental illness, abnormality or disorder, Charboneau would have
11 serious difficulty in refraining from sexually violent conduct
12 or child molestation if released.

13 In *Kansas v. Crane*, 534 U.S. 411, 2002, the Supreme Court
14 held that in order to civilly commit someone for sexual
15 dangerousness there must be proof of serious difficulty in
16 controlling behavior. See *id.* at 413. The Supreme Court noted
17 that this standard allowed courts wide discretion in relying on
18 numerous factors relevant to sexual dangerousness. The Fourth
19 Circuit repeatedly has applied this standard in Adam Walsh Act
20 cases. See *Perez*, 752 F.3d at 407; *Antone*, 742 F.3d at 158;
21 *Heyer*, 740 F.3d at 291 through 294; *Wood*, 741 F.3d at 422 and
22 423; *Bolander*, 722 F.3d at 214 through 216; *Wooden*, 693 F.3d at
23 459 through 463.

24 In *Wooden*, the Fourth Circuit identified certain factors to
25 consider at Prong 3, including, one, failures while on

1 supervision; two, resistance to treatment; three, continued
2 deviant thoughts; four, cognitive distortions; five, actuarial
3 risk assessments; six, impulsiveness; and seven, historical
4 offenses, both sexual and nonsexual. See *Wooden*, 693 F.3d at
5 pages 458 through 462.

6 A court also must fully consider and account for why a
7 detainee's positive incarceration conduct is overshadowed by
8 other factors that warrant a finding that the detainee would
9 have serious difficulty from refraining from engaging in
10 sexually violent conduct or child molestation. See *Antone*, 742
11 F.3d at pages 164 through 170.

12 The experts all agreed that when housed in a secured
13 institution Charboneau generally acts as a model prisoner. He
14 did so after his 1982 conviction and the other convictions.
15 Yet when he was released, he abused alcohol and reoffended
16 violently and sexually. Unlike the detainee in *Antone*,
17 Charboneau is in BOP custody on a supervised release revocation
18 for which he violated his term of supervised release while in
19 sex offender treatment. Indeed, on the date of the 2003
20 violent sexual assault fueled by alcohol, he was being closely
21 supervised, had been attending sex offender treatment in the
22 community, and was urine tested for alcohol on the morning of
23 the violent, alcohol-fueled sexual assault. Yet later that
24 afternoon he engaged in the alcohol-fueled sexual assault of
25 his adult niece.

1 Moreover, Dr. Zinik's report and testimony fully explain
2 why Charboneau comports himself well in a controlled
3 institutional environment but reverts to drinking alcohol,
4 lawbreaking, and sexual violence in the community. Drs. North
5 and Ross also gave persuasive explanations on this point even
6 if one only looks at the alcohol use disorder diagnosis.

7 Charboneau's positive institutional conduct does not
8 outweigh the other factors in this unique case. One such
9 critical factor is Charboneau's admission in December 2016 that
10 he is sexually dangerous. See Government Exhibit 26. At trial
11 Dr. Holden credibly testified that Charboneau admitted to her
12 in December 2016 that he was sexually dangerous.

13 The Court gives credit to her testimony and does not credit
14 the opinion of Dr. Plaud attempting to explain the admission or
15 the denial, to the extent Mr. Charboneau denied it during his
16 testimony. Rather, the Court credits Dr. Holden's testimony
17 that she had developed a therapeutic alliance with Charboneau,
18 that he made the admission, and that she carefully and
19 accurately recorded the statement.

20 As for the *Wooden* factors, the record is replete with
21 evidence of Charboneau's failure on supervision, including most
22 recently in 2003 his resistance to both sex offender treatment
23 and substance abuse treatment -- although to his credit, he is
24 in the CTP and attending AA meetings -- and cognitive
25 distortions as reflected in Government's Exhibits 24 and 25,

1 and as reflected in his persistent denial until the trial in
2 this 4248 case that he has an alcohol abuse problem. The Court
3 also has considered the actuarial risk assessment,
4 impulsiveness when not in a custodial setting, particularly as
5 to alcohol, and historical offense behavior, both sexual and
6 nonsexual. They too support this Court's finding on Prong 3.

7 The Court also credits the opinion of Dr. Zinik as helping
8 to explain the absence of continued deviant thoughts. Unlike
9 the respondent in *Wooden*, there isn't evidence of continued
10 deviant thoughts by Mr. Charboneau.

11 Finally, the Court does not credit Dr. Plaud's opinion on
12 Prong 3. Dr. Plaud opined, as I've mentioned, that in order to
13 conclude that Charboneau is sexually dangerous the following
14 sequence must be shown to be in place in the future, quote:
15 First, we must be able to conclude that Mr. Charboneau will
16 relapse with alcohol abuse, which does have some probability
17 given his history. However, we must also be able to conclude
18 that as a consequence of this alcohol relapse Mr. Charboneau in
19 the future will have serious difficulty in controlling
20 specifically his sexual impulses, and we must be able to show
21 that the risk of relapse is related not to general behavioral
22 regulation and control but rather to sexual volitional
23 impairment. Given the data in this case, it is not possible to
24 do so regarding Mr. Charboneau, especially given the absence of
25 a sexually-based mental disorder in this case.

1 Mr. Charboneau's major issue concerns a nonsexual disorder
2 related to his historic substance abuse. That should be the
3 focus of future management issues related to Mr. Charboneau,
4 not sexual risk. He is therefore not a sexually dangerous
5 person under federal law in my professional opinion, end quote.
6 And that's at page 4 of Dr. Plaud's report.

7 Dr. Plaud opined that it was too speculative to believe
8 that Charboneau would drink alcohol, get drunk, and commit
9 another act of sexual violence. Dr. Plaud opined that if
10 Charboneau lacked volitional control because of his alcohol
11 abuse disorder he would have had many more instances of sexual
12 violence.

13 The Court does not agree with Dr. Plaud. Rather, the Court
14 gives greater weight to the opinion of Dr. Zinik at Prong 3.
15 Dr. Zinik persuasively explained the unique interplay among all
16 of Charboneau's diagnoses to explain why Charboneau met Prong 3
17 under the Adam Walsh Act. As part of that analysis, Dr. Zinik
18 persuasively discussed his risk assessment of dynamic risk
19 factors, as well as static risk factors. He also persuasively
20 explained how the SVR-20, in absence of protective factors,
21 supported his findings at Prong 3 and persuasively explained
22 how an examination of BOP's guidelines to determine Prong 3
23 supported a positive finding on Prong 3.

24 Alternatively, even if one just considers Charboneau's
25 alcohol use disorder alone as the Prong 2 diagnosis, the Court

1 credits the opinions of Dr. Ross, Dr. North, and the
2 alternative opinion of Dr. Zinik over the opinion of Dr. Plaud
3 at Prong 3. The opinions of Dr. Ross, Dr. North, and the
4 alternative opinion of Dr. Zinik are better reasoned, more
5 thorough, and more consistent with this unique case.

6 In sum, the Government has proven its case by clear and
7 convincing evidence. Thus, Blake Charboneau is committed to
8 the custody of the Attorney General under the Adam Walsh Act
9 until such time as he is no longer a sexually dangerous person.

10 I do thank counsel for their work in connection with the
11 case. I will sign an order that will incorporate by reference
12 my findings and conclusions in connection with this case, and
13 we will be in recess until 9 a.m.

14 (Proceedings concluded at 5:38 p.m.)
15
16

17 **C E R T I F I C A T E**

18 I, LORI RUSSELL, RMR, CRR, United States District Court
19 Reporter for the Middle District of North Carolina, DO HEREBY
CERTIFY:

20 That the foregoing is a true and correct transcript of the
21 proceedings had in the within-entitled action; that I reported
22 the same in stenotype to the best of my ability and thereafter
reduced same to typewriting through the use of Computer-Aided
Transcription.

23
24 

25 Lori Russell, RMR, CRR
Official Court Reporter

Date: 10-18-17

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:15-HC-2287-D

UNITED STATES OF AMERICA)
)
 Petitioner,)
)
 v.)
)
BLAKE CHARBONEAU,)
)
 Respondent.)

ORDER

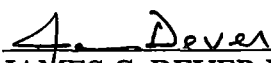
The United States (“petitioner”) seeks to civilly commit Blake Charboneau (“Charboneau” or “respondent”) as a “sexually dangerous person” under the Adam Walsh Child Protection and Safety Act of 2006 (“Adam Walsh Act”), codified at 18 U.S.C. §§ 4247–48. Pursuant to the Adam Walsh Act, if the court finds by clear and convincing evidence, after a hearing, that a person is a “sexually dangerous person,” the court must commit the person to the custody of the Attorney General. *Id.* § 4248(d). A “sexually dangerous person” is one “who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others.” *Id.* § 4247(a)(5). A person is considered “sexually dangerous to others” if “the person suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released.” *Id.* § 4247(a)(6).

To obtain a commitment order against Charboneau, the government must establish three facts by clear and convincing evidence: (1) that Charboneau “has engaged or attempted to engage in sexually violent conduct or child molestation,” *id.* § 4247(a)(5); (2) that Charboneau currently “suffers from a serious mental illness, abnormality, or disorder”; and (3) as a result of the serious

mental illness, abnormality, or disorder, that Charboneau “would have serious difficulty in refraining from sexually violent conduct or child molestation if released.” Id. § 4247(a)(6); see United States v. Perez, 752 F.3d 398, 407 (4th Cir. 2014); United States v. Antone, 742 F.3d 151, 158 (4th Cir. 2014); United States v. Heyer, 740 F.3d 284, 291–92 (4th Cir. 2014); United States v. Wood, 741 F.3d 417, 419 (4th Cir. 2013); United States v. Bolander, 722 F.3d 199, 206 (4th Cir. 2013); United States v. Springer, 715 F.3d 535, 538 (4th Cir. 2013); United States v. Caporale, 701 F.3d 128, 130 (4th Cir. 2012); United States v. Wooden, 693 F.3d 440, 442 (4th Cir. 2012); United States v. Francis, 686 F.3d 265, 268, 274 (4th Cir. 2012); United States v. Hall, 664 F.3d 456, 461 (4th Cir. 2012); United States v. Comstock, 627 F.3d 513, 515–16 (4th Cir. 2010).

On January 27, 2017, the court held a bench trial. On September 28, 2017, the court announced its findings and conclusions from the bench. The transcript is incorporated herein by reference. The United States has proven by clear and convincing evidence that Charboneau has engaged in sexually violent conduct and suffers from serious mental illnesses, abnormalities, or disorders. The United States also has proven by clear and convincing evidence that, as a result of his serious mental illnesses, abnormalities, or disorders, Charboneau “would have serious difficulty in refraining from sexually violent conduct or child molestation if released.” 18 U.S.C. § 4247(a)(6). Thus, the United States has proven that Charboneau is a sexually dangerous person as defined in the Adam Walsh Act. Accordingly, judgment shall be entered in favor of petitioner, the United States, and against respondent, Blake Charboneau. Charboneau is hereby committed to the custody and care of the Attorney General pursuant to 18 U.S.C. § 4248.

SO ORDERED. This 28 day of September 2017.


JAMES C. DEVER III
Chief United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

UNITED STATES OF AMERICA,
Petitioner,

v.

BLAKE CHARBONEAU,
Respondent.

Judgment in a Civil Case

Case Number: 5:15-HC-2287-D

Decision by Court.


This action came before the Honorable James C. Dever III, Chief United States District Judge, for consideration after the court held a bench trial.

IT IS ORDERED AND ADJUDGED that the respondent is committed to the custody and care of the Attorney General pursuant to 18 U.S.C. § 4248.

This Judgment Filed and Entered on September 28, 2017, with service on:
Christopher M. Anderson, Michael James and G. Norman Acker, III
(via CM/ECF Notice of Electronic Filing)
Halerie F. Mahan and Katherine E. Shea
(via CM/ECF Notice of Electronic Filing)

September 28, 2017

Peter A. Moore, Jr.
Clerk of Court

By: 
Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:15-HC-2287-D

UNITED STATES OF AMERICA,
Petitioner,

v.
BLAKE CHARBONEAU,
Respondent.

NOTICE OF APPEAL

Pursuant to Rule 4(a) of the Federal Rules of Appellate Procedure, NOTICE IS HEREBY GIVEN that respondent, Blake Charboneau, hereby appeals to the Fourth Circuit Court of Appeals from the judgment entered in this court in the above-captioned case. As judgment was entered by the Honorable James C. Dever III, Chief United States District Judge, on September 28, 2017, this notice is therefore filed within the time specification established in Rule 4(a)(B).

Respectfully requested this 2nd day of October, 2017.

LOUIS C. ALLEN
Acting Federal Public Defender

/s/ Katherine E. Shea
KATHERINE E. SHEA
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LR 57.1 Counsel, Appointed

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing *Notice of Appeal* was served upon:

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BLAKE CHARBONEAU
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by electronically filing the foregoing with the Clerk of Court on October 2, 2017 using the CM/ECF system which will send notification of such filing to the above.

This the 2nd day of October, 2017.

/s/ Katherine E. Shea
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CERTIFICATE OF SERVICE

I certify that on January 22, 2018, the foregoing document was served on all parties or their counsel of record through the CM/ECF system and by serving a true and correct copy at the address listed below:

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/s/ Jaclyn L. DiLauro
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